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RAILROAD SAFETY

HEARING

BEFORE THE

SUBCOMMITTEE ON
SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

RAILROAD SAFETY

MAY 6, 1985

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RAILROAD SAFETY

MONDAY, MAY 6, 1985

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:33 a.m., in room SR-253, Russell Senate Office Building, Hon. Bob Packwood (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Pamela Garvie, staff counsel; and Linda Morgan, minority staff counsel.

OPENING STATEMENT BY SENATOR PACKWOOD

Senator PACKWOOD. The hearing will come to order, please.

Today we are going to consider the general subject of railway safety. Specifically, we are going to consider appropriate funding levels for the Federal Railroad Administration for 1986 and 1987; the administration's proposal to end funding for the State Participation Program; and rail labor's proposed amendments to the rail safety laws.

Our first witness today is the Honorable John Riley, Administrator of the Federal Railroad Administration and a man I have known for a good many years in his former capacity working for Dave Durenberger, when he and I had a rather lengthy time working together on the Economic Equity Act and other matters involving equal treatment for women in the workplace.

I have a statement from Senator Hollings to be included in the record.

[The statement follows:]

OPENING STATEMENT BY SENATOR HOLLINGS

Today the Committee is holding a hearing on the reauthorization of the Federal rail safety program. This hearing represents a continuation of the Committee's efforts on this issue last Congress, when we held hearings on the Federal rail safety program and also on Amtrak safety and drug and alcohol abuse among rail employees. I will be interested to hear of the progress made in all of these areas since our last hearings.

I am particularly concerned about what the Federal Railroad Administration has found through its safety inquiry into rail-highway gradecrossing safety. Accidents at grade crossings continue to be the greatest rail safety problem—a reality made stark in my own State of South Carolina last summer. I share what I know is the frustration of governmental officials at the Federal and state levels, the rail industry and labor, and the public at large with this continuing safety problem, and I look forward to the comments of all the witnesses today on further efforts to deal with this issue.

The Committee will also be hearing from rail labor representatives on several amendments which they are proposing—similar to those which they proposed last year. I understand fully rail labor's concern with rail safety, and I share their interest in ensuring that the Department of Transportation carries out its safety mandate. At the same time, I want to ensure that any legislative proposal which is adopted is truly necessary based on the safety data and a review of the adequacy of existing regulatory and enforcement efforts. Thus, as I indicated at last year's hearings, I am interested in labor's elaboration on the need for their legislative proposals, particularly given that they do introduce new dimensions to the safety laws and add new regulatory requirements. Likewise, I look forward to the comments of the other witnesses on these proposals.

Senator PACKWOOD. I would say to all of the witnesses that your statements, in their entirety, will be in the record. You were very gracious about handing them all in. I read them all last night and today. So you do not need to read them to me. If you would summarize them and give me a chance for questions, I will appreciate it.

John, it is good to have you with us.

Mr. RILEY. It is a pleasure to be here, Senator.

STATEMENT OF HON. JOHN H. RILEY, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION, ACCOMPANIED BY JOE WALSH, ASSOCIATE ADMINISTRATOR FOR SAFETY; AND JACK MASON, CHIEF COUNSEL

Mr. RILEY. Senator, I will put my statement in the record in its entirety.

To my left is Joe Walsh, who is our Associate Administrator for Safety. To my right is Jack Mason, who is our Chief Counsel. Rather than summarize a statement the committee already has read, what I would like to do this morning is make two points by way of context.

Senator PACKWOOD. Good.

Mr. RILEY. One is to review the industry's safety numbers for last year, the actual performance of the industry. Second is to review what FRA emphasized last year and what we will emphasize this year.

I brought Phil Olekszyk, our answer to the "Price is Right" girl, to manipulate the charts for us.

A year ago, when I came before this committee, we had some very good numbers to report. The year 1983 was, by any standard the best year in the history of the industry. But it was also a year of very light volume. And, as we all know, accident numbers tend to move geometrically with volume.

Now 1984 was different. Volume went up almost 10 percent in 1984. It was a very good year economically for the railroad industry. The best piece of news I can bring to the committee this morning is, notwithstanding that increase in volume, we did succeed in shattering most of the records that were set in 1983. Let me illustrate for you where we succeeded and where we failed.

The first chart indicates the fact that the accident rate in 1984 fell by a little over 7 percent to the lowest accident rate we have ever recorded since FRA began compiling statistics.

The next chart illustrates something that I think is even more important.

Accident rates are normalized for tonnage and for mileage. The raw number of accidents, not weighted for any factor, actually declined last year. It went down about 1 percent.

Mr. Chairman, you have to go back more than a decade to find a year in which volume went up and the gross number of accidents went down.

I think that is a record that management and labor can be very proud of.

The next chart illustrates the fact that the improvement tends to run pretty generally across all of the areas in which we keep accident statistics. But there is an interesting thing that that chart also illustrates, and it is called "trend." This is clearly not a 1 year aberration It is a trend, and it began back in 1979. There are many reasons for it, but I believe, Mr. Chairman, that the single most important factor in the improvement in safety statistics for the last 5 years has been deregulation. The Staggers Act gave the industry something that it did not have before, which is positive cash flow. They have invested that positive cash flow in track and equipment. As you can see from that chart, it has been the improvement in track-related and equipment-related accidents that has really driven the overall improvement in numbers.

Now, there are a number of other statistics that I could cite to you: the grade crossing accident rate went down; the number of employee fatalities went down. There is a downside, also, however. While the number of accidents and the percentage of accidents decreased last year, their severity did not, and fatalities actually increased last year.

Fatalities among trespassers and at grade crossings did increase, and I think the next chart illustrates that phenomenon.

Grade crossings, while they are considered to be highway accidents, we take a great interest in them, obviously, because they involve trains as well as highway vehicles.

That shows all of the trends.

The accident rate at grade crossings did continue to decline. But the raw numbers went up slightly last year, and the number of fatalities went up rather sharply last year. There were fewer accidents, but they were more serious.

Whether that is an emerging trend or a 1-year aberration, it is just too early to tell you. But it focuses on something that concerns us.

In the first 90 days of this year the trend that seems to have fallen back down again, but 90 days is not long enough to tell you whether or not that has really been an aberration.

On employee fatalities, we had exactly the opposite track record than we do on trespassers and grade crossings. Employee fatalities declined a little over 3 percent. The number of employee injuries went up, but the severity of those injuries went down very dramatically. Over 60 percent of all reported injuries were a day or less lost work time.

The bottom line to the year, in my view, Mr. Chairman, is that it was 1 year of very solid progress and these numbers are going to be a real challenge to try to match and exceed in the future.

Now let me turn to my second topic, which is FRA.

The next chart illustrates what FRA did last year. For the first time in our history—and this is our most significant development—we reached the full complement of 325 field safety inspectors. You can see some of the implications of that on the chart.

Last year, we performed, by a fairly substantial number, more onsite inspections than we had ever performed in any given year. That continues an upward trend that began a little more than 1 year ago.

That blue line does not break down types of inspections, but I might add that we did "target" them. We increased the number of hazardous material inspections by over a third last year. We increased the number of human factor inspections by about 20 percent. In other words, in addition to increasing numbers, we tried to move our people away from things that were ministerial, with little impact on safety, into the high priority areas, where there is human life exposure.

The chart also does not reflect the fact that we completed 14 regional safety assessments last year and four full system assessments, by far the most we have ever done.

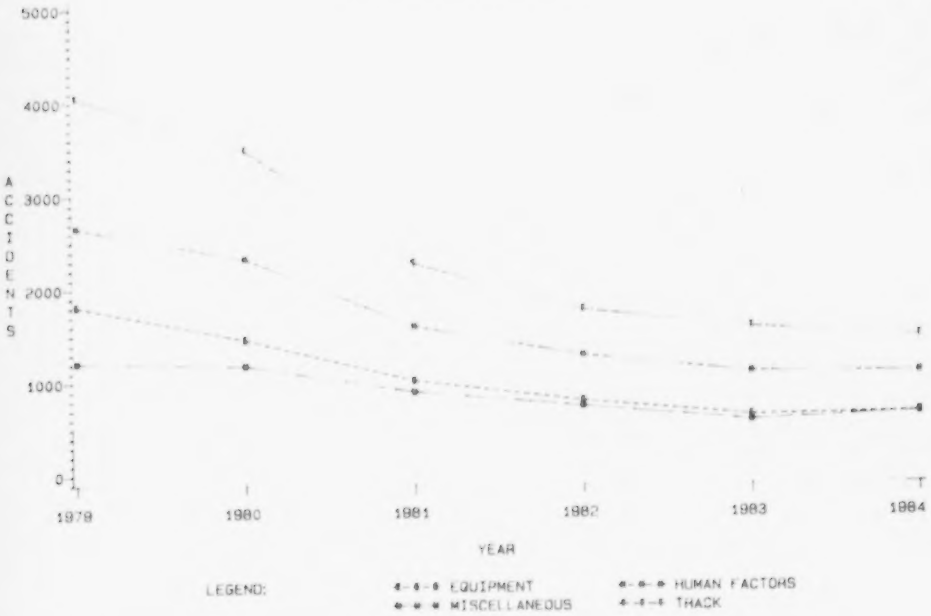
Now, on the issue of collecting fines, I have included that on the chart because I think FRA was subject to a very legitimate criticism in past years that it did not collect fines that it had levied.

As you know, when we levy a civil fine, it is, in effect, a civil action. We have to prosecute. We had a backlog of several years.

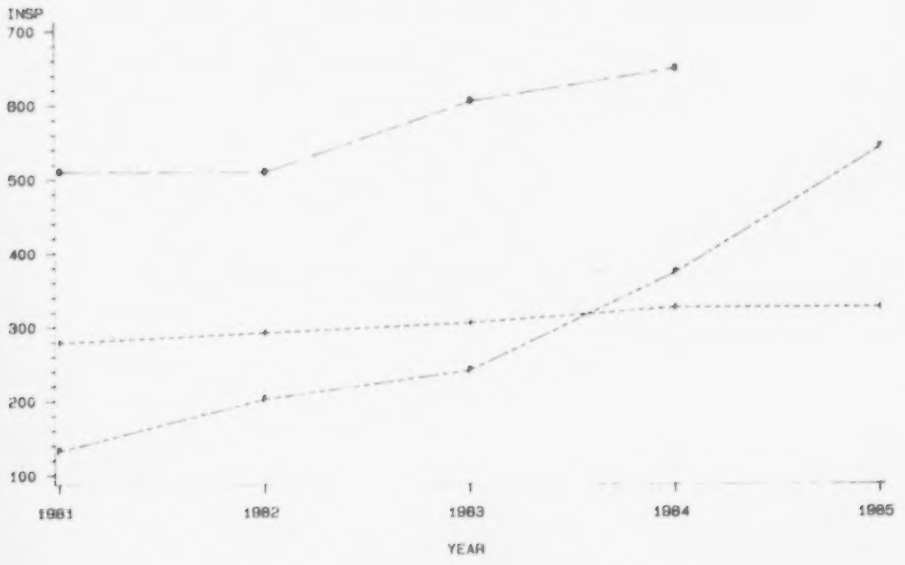
What that chart illustrates is two things. First, we increased the amount of fines we have collected by about 50 percent from 1982 to 1983, over into 1984. We have already nearly doubled the amount we collected last year in the first 6 months of this year. That reflects two factors. We are not out to try to set world records for fines. That is not the objective. But it reflects the fact that we are collecting and have, in fact, collected the backlogs that were here a year and a half ago. Also, it reflects the fact that now, when we levy a civil penalty, we do not allow it to lay on the books. We immediately commence collection procedures. I think that makes it a far better deterrent.

[The charts follow:]

TRAIN ACCIDENTS

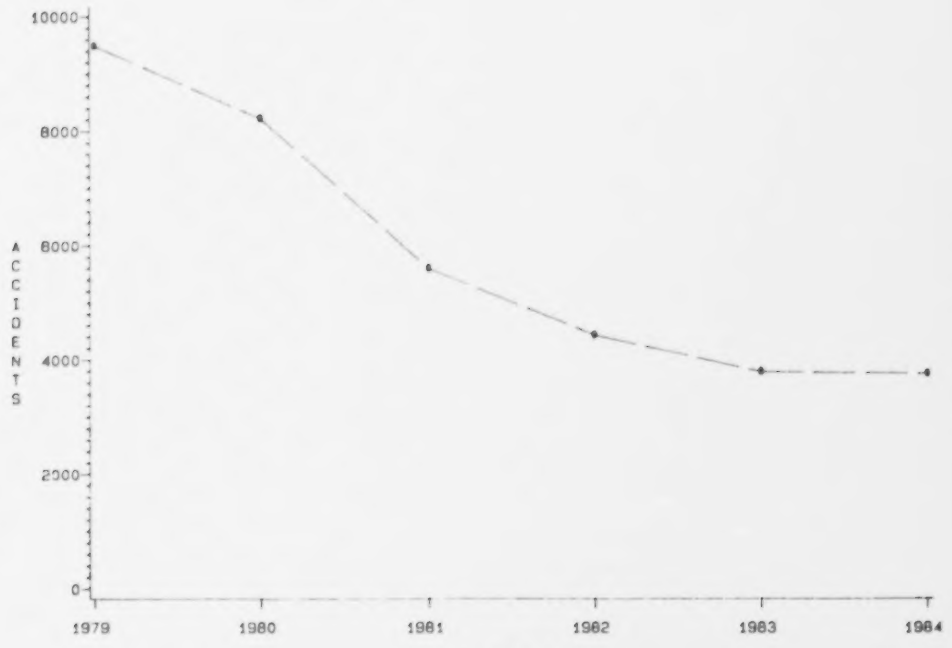


INSPECTIONS, CIVIL FINES AND INSPECTORS



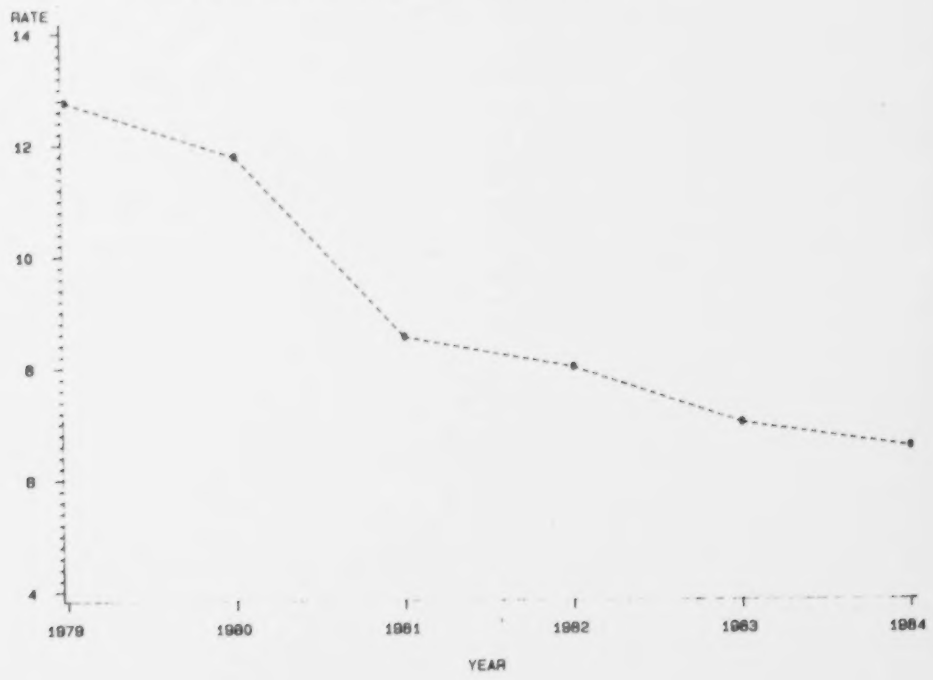
INSPECTIONS IN HUNDREDS
FINES IN TEN THOUSANDS
FRA INSPECTORS YEAR END

TRAIN ACCIDENTS, 1979 - 1984

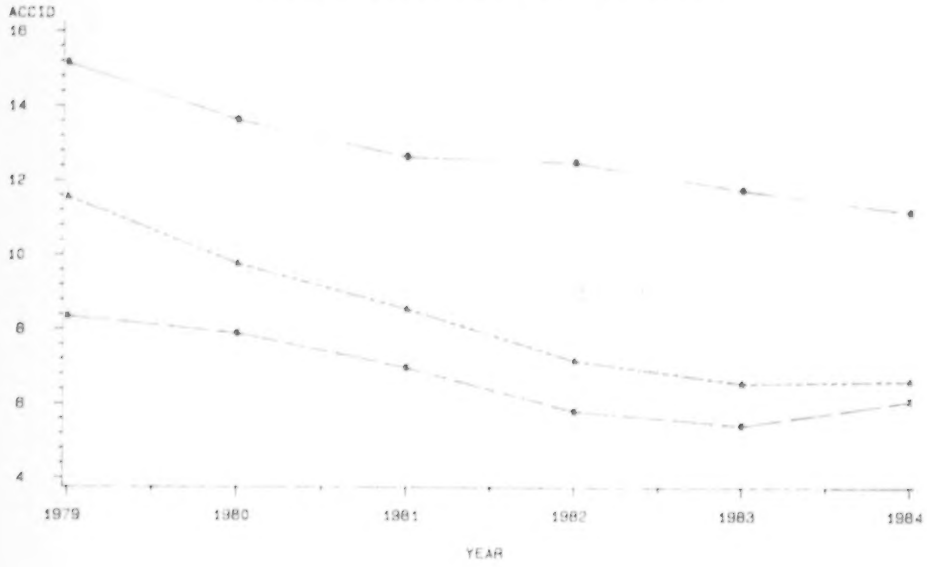


EXCLUDES RAIL-HIGHWAY GRADE CROSSING ACCIDENTS/INCIDENTS

ACCIDENTS PER MILLION TRAIN MILES



GRADE CROSSING ACCIDENTS



ACCIDENTS IN THOUSANDS
FATALITIES IN HUNDREDS
RATE IN ACCIDENTS PER MILLION TRAIN MILES

Mr. RILEY. Now, on the broader scope, the single thing that I have been most pleased with in the last year is that FRA concluded nine major regulatory actions last year. We had never concluded more than three in a year in the past. We have gone a long way toward cleaning up that backlog, and we did not complete it. There is still work to be done this year. We hope to complete the remaining rulemaking petitions that are on our table by the end of this calendar year.

The alcohol and drug rule will be forthcoming very shortly. It is completely drafted and it is in the legal review process. We are proceeding to set up implementing conferences now at five locations around the country to train our inspectors and the industry and labor representatives on the new environment that will come about postrule.

Senator PACKWOOD. John, let me ask you there, how soon is soon?

Mr. RILEY. Well, I wish I could give you a date, Senator, but let me give you the best approximation I can give you.

The rule is drafted in its entirety. It has been in legal review for a couple of weeks, now, and I am told they are very nearly completed with that.

It is about a 313-page document. It is very complex because of the drug issues. The alcohol issues were simple; the drug issues were tough.

We are going ahead to set up our implementing conferences through the early summer. That will give you a sense of the way we see it playing out.

I really cannot give you a date because there are a number of people involved in the review process. But there are no hitches in it. It is going through the normal review process.

Senator PACKWOOD. OK.

Thank you.

Mr. RILEY. The number one rulemaking priority for this year is communications. I have to say that I do believe if there were a single area where we could invest our time productively in the industry, it is in modernizing the industry's communications pattern.

This has shown up time and again in NTSB, in accident reports, and we are going to take that on whole-hog. We do intend to issue an ANPRM on communications for the summer and move to an NPRM before the end of the year.

We will also proceed with our locomotive cab safety inquiry. We hope to commence that in the month of June. We will have to handle a number of petitions on cabooseless train issues. Many of our safety rules are written to presume the existence of a caboose. We have to consider how we deal with the fact that there are now about 2,000 cabooseless train movements.

Finally, I am going to grant a hearing that Jim Snyder, national legislative director, United Transportation Union, requested to examine all of the issues surrounding the power brake rule, whether the changes that were made 2 years ago should be retained or stricken.

Now, if I could give you a bottom line on all of this, there is a real flip side to the statistics in those charts. I think we have to remember this: This year's numbers are the standard by which next year's progress is going to be judged. This is a real challenge. We are long past the era when, with a few hundred million dollars in track investments, we could make dramatic improvements in safety numbers. In the future, it is going to require dealing with much tougher issues—the human factors; new, lightweight equipment; higher speed operations. It is going to require a lot of creativity and a lot of commitment, not only on our part but on the part of everyone from this committee right on down to the people who work on the line, to keep these numbers moving down.

I have three general comments.

First is for the industry. The industry is going to have to face the reality that it will have to devote a greater share of its own dollars to safety research and development. We will continue to fund research and development. It is in our budget. It has been approved for the next couple of years.

But an environment where the budget is in an enormous squeeze, as it is today, it is rather obvious on its face that long-term research and development is a poor competitor with human needs programs and essential military priorities.

My word of advice to the industry is to build into their planning schedules a greater industry cost-sharing in safety research and development. That is going to be essential to keep this progress going.

Second, for labor and management, it is going to require a rigorous and selfless separation of safety and economic issues. We

cannot, no matter how great the temptation may be for any of our short-term interests, blur that line between economic issues and safety issues.

Finally, Mr. Chairman, for all of us in government agencies, I think it is going to be essential for us to recognize, more than we ever have before, that safety is the ultimate cost benefit issue. It is the ultimate cost benefit issue because resources are finite. To the extent we put dollars into the fourth, fifth, or sixth most important priority, rather than the first, we waste at least a percentage of those dollars, and we may never be able to recover that ground.

What that means for all of us in Federal agencies, as we regulate and as we force the industry to spend its safety dollars, is we have to carefully weigh whether we are forcing those dollars to be spent in the most cost-effective way. In the guidance we provide, we need to go beyond defining options into defining choices and providing some real-world guidance for the industry in distinguishing between what can be done, what should be done, and what must be done.

These are not easy challenges. But these resource allocation decisions go to the heart of the safety issue.

I think we are all up to the challenge. I am looking forward to coming back here a year from now with numbers that are even better than this.

Thank you.

Senator PACKWOOD. John, you talked about higher speed, light weight, and grade crossing problems.

I remember, when I was a young lawyer in a large lawfirm in Portland, and they represented Southern Pacific. I was not in that particular section. They had lots of grade crossing cases, obviously, defending them.

I remember one situation where our lawyer wished that he'd never put the engineer on the stand because the fellow testified something like this. He said, "Why you ought to have seen them, Mr. Hilliard. They try to beat you at every crossing. It's zip, zip, zip. You're bound to hit one or two."

I think we lost that case, as I recall.

Now what are you going to do about grade crossing problems? You have about 54 percent of your fatalities at grade crossings. What can you do?

You said that capital outlay is no longer the problem, or no longer the issue.

Mr. RILEY. Well, on grade crossings, you know, on grade crossing accidents, I have a similar story for you

The gentleman who headed my Minnesota office when I headed Dave Durenberger's staff was one of the brightest people I ever met. Yet he drove through a closed grade crossing into the 13th car of a Burlington Northern freight. It was just an amazing experience.

In 28 percent of all grade crossing accidents, the driver hits the 12th or later car on the train. It is not in all of them. But it just illustrates how much of this problem involves getting inside the heads of human beings.

Let me talk about it conceptually and then practically.

Conceptually, I think there are two major problems. People do not understand that a train cannot stop, touch its brakes, slow down the way a car can. We all can relate to the movement of a car. But we tend to psychologically assume that the train has the same control ability. As you know, with a steel wheel against a steel rail, if a train can see you, it probably cannot stop. It probably cannot stop. It takes over a mile to stop at 55 miles an hour.

Educating the public on that single issue probably could do more to reduce accidents than all of the FRA-type things I am about to go over.

The second problem is the fact that people do not enforce grade crossing laws. We will drive 25 miles an hour in a 25 mile an hour zone because we don't want to pay that ticket. But we will risk our lives at grade crossings because we know we are not going to be ticketed.

We have been trying to carry the theme through to local law enforcement officers, that it is every bit as important to stake out the grade crossing every now and then as it is to stake out the 25 mile an hour zone.

Now, in a more technical sense, what do we do?

We are developing a technique for integrating accident information, hazardous material flows, and train routes to focus better our enforcement activities and accident prevention. This effort, called Risk Assessment and Control Program [RACP] will include both non-grade crossing and grade crossing accidents and incidents.

We have a file on every single grade crossing in this country, all 370,000 of them, public and private. We can tell you the volume of freight movements and passenger movements across the crossing, its accident history, hazardous material movements, automobile traffic density. We will now be able to use this to guide States in where they want to use their Section 203 money and their own money in equipping crossings with bells.

So, as an accident predictor, we will now be able to use what we have always maintained, the index, more effectively.

The second thing is Operation Lifesaver.

Operation Lifesaver has played an enormous role in the reduction of these grade crossing accidents. There is no question about it. We have, as of last year, all of our safety inspectors devote one man-day per quarter to Operation Lifesaver.

I would like to commence the same kind of national campaign on behalf of Operation Lifesaver tha we have commenced on seatbelts. I would like to find the time this year to initiate that kind of program.

I have not had the time in the last year to do it, but that is one of my personal goals for the next year.

We have sponsored two national symposia on the grade crossing problem, to develop ideas on how we can more effectively combat it with our resources and provide leadership to others to effectively combat it with theirs.

We held 2 days of public hearings in January here in Washington. Those 2 days of public hearings will result in a formal report from FRA which I believe we will have out by the end of May or early June, listing our recommendations for ourselves and for others.

Finally, we have worked with the Federal Highway Administration to assemble a program of low-cost alternatives to the installation of bells, flashers, and gates. That involves things from brush clearance to highway markings to uniform signs to better lighting. We have an audio visual display, and we are going around from State to State, working with State officials, trying to implement those changes.

This is a very tough area.

There are other areas where you can write an alcohol and drug rule or a communications rule. But grade crossings are tougher. They involve a lot of little pieces, all of which have to be meshed together, not only to make the crossing itself logistically safer, which is what we are working on, but also to get into the public's mind so they don't attempt to beat trains.

That is an overview of where we are and what we are working on.

Senator PACKWOOD. I have a quick question on State participation.

In the past, you testified it is a good program. Now you are recommending zeroing it out in terms of money. Do you still think the program has helped on safety? How do you explain the fact that your estimation and the States' estimation of how many of the States will remain in the program if we zero them out on funding are so widely disparate?

Mr. RILEY. It is a good program. There is no question that it has played a role. There is no question about it.

However, Mr. Chairman, when you face the kind of budget situation that you face and that we face, you have to have a rule of thumb in evaluating priorities. Mine is simple.

We have funded programs where, if the Federal Government does not fund them, they would not get funded. Areas where it is likely or probable that the activity will continue without Federal funding are the most likely to be cut.

Now, if the entire State Participation Program were turned back to the States, it would require an average expenditure of about $109,000 per State per year. That is not an extraordinary number.

If the States were unwilling to pick up this burden—and it is not a very great burden—I think it tells us something about the effectiveness of the program in their eyes.

Now the problem with the program from a strictly funding cost benefit aspect is that it is not as good a cost benefit tradeoff as other options. There were about 30 inspectors in the program prior to the time the Federal Government began the cost sharing. So, for those 30 positions, funding by the Federal Government was purely a bonus. It was not an incentive.

We believe—and I will yield to Joe to talk a little bit more about the conversations he has had with the States—that at least 70 of the 100 State inspectors today would remain in, even if the program were phased out in its entirety.

If you accept those numbers, it suggests that the cost benefit of this expenditure is a very low one. We are paying a lot of money for a fairly small number of inspectors. While the program is a good program and we do not question its value, when you face a budget crisis of the type we face, this is not an area that you would

give preferential consideration to over an area, such as safety research and development, where there is no incentive for anybody to step in.

Joe, let me yield to you to talk a little bit about the conversations with the States.

Mr. WALSH. Well, Mr. Chairman, we have looked at the 30-some States with approximately 105 or 110 inspectors in the program. Of those States, in our discussion with people at our level, it has been implied to us that approximately 20 States and 70 inspectors would remain in the program.

We have also discussed with the States that our work at the present time, our training, would continue. We would continue to work with them to see that there is no duplication. A problem surfaced 4 or 5 years ago, where the industry was saying that Federal and State duplication was a problem. We have resolved all of that.

We would continue all of those programs.

So, what we are suggesting is that each State fund the program and that it go back to the State. It was more a seed-money program a few years ago, and now we think the costs should be reverted to the States.

Mr. RILEY. If I could add a final comment on this, it is our intention to continue to integrate the State inspectors into our national inspection plan. We will continue to provide the training we currently provide in Oklahoma City for them.

I really have not gotten so much into the estimates of who would stay and who would go. Rather, look at the cost of $109,000 per State coming from a Federal Government that is deeply in deficit as opposed to States that are mainly in surplus. That is not an inordinate amount of money.

Senator PACKWOOD. My last question has to do with the amendments proposed by rail labor.

As I recall, you have been in opposition to all seven amendments. I assume that position has not changed.

Mr. RILEY. It has not changed, Mr. Chairman.

Senator PACKWOOD. Last year, you indicated that not only were you in opposition, but you would recommend a veto if the standing to sue amendment were included in the bill.

Is that still your position?

Mr. RILEY. Now that I have had a year to work with this agency, I believe that even more strongly than I did a year ago. If there is a single mechanism to shut down the effective operation of the agency, that is it.

Senator PACKWOOD. The standing one?

Mr. RILEY. Let me elaborate on that, if you will, because that is an important issue.

It is really an issue of balance.

We consumed about a third of our lawyers 'time last year defending a little more than a dozen lawsuits. I will add to the Chair that we have never lost a lawsuit on the standing issue. There is no question that we have used our discretion properly.

But what you have to balance off is this.

On the one hand there is the employees' legitimate interest in compelling us to act, if we fail to act, in an area where there is an emergency or a danger. The other side of the coin is the recogni-

tion that the same people who prosecute the citations and write the rules defend the lawsuits. To the extent they are spending time in court, you hurt every other aspect of our safety operation.

Now, Congress drew that balance. You put a provision in 1980 in the law which states that when an employee is in imminent danger, due to a condition we do not act on, of physical harm, they have the right to litigate. That is a fair balance.

That means that an employee who does face physical danger can, in fact, go to court if he believes we are not acting properly. But it also means that in the roughly 100,000 or so cases a year, where we handle very minor rule violations that do not impact on personal safety, the right to sue is not there.

We have never lost a single suit brought under the 1980 standing provision. I think that is good testimony to the fact that we use our discretion properly. There simply is no case, in my judgment, Mr. Chairman, of abuse of discretion.

Here is what I fear.

As you know, there is now quite a dispute going on between the industry and labor over the use of caboose less trains. I do not want our agency involved in the economics of that. That is a collective bargaining matter.

We normally receive about 700 or 800 individual complaints a year which we investigate. Every single one. Once this caboose less train dispute heated up, in a single month we received 2,000 complaints of alleged safety violations on caboose less trains, which we did go out and investigate.

That is an illustration of how the agency can simply be overwhelmed if it is targeted on a single issue.

We defended about a dozen major lawsuits last year and consumed a third of our time in doing it.

I think Jim Snyder and the labor folks act in perfectly good faith. But they have no more control over all of their members, if we give them the right to file a suit for $26, which is the average cost of filing, than anyone else would.

My concern, Mr. Chairman, is that this would so overwhelm the agency in defending lawsuits on issues that do not impact directly on individual safety. It would severely constrain our ability to enforce the law.

That probably will not affect me because, even if the law were passed, it would be a year and a half or two years hence, and it would affect my successor. But I do not want to bequeath that to my successor because he would have only two choices. Number one, he could defend these things in court and simply use his limited resources doing it. Or, he could simply levy the fines and, in effect, give up his own discretion on where to fine and where not to fine to avoid the first problem.

Both of those alternatives are bad. I feel even more strongly about this than I did 1 year ago.

If I had come up in 1980, I would have supported the labor amendments because I think they do have the right to sue when there is an imminent danger of injury. But when it goes beyond that, you cannot build the case that the tradeoff between the right to sue and the damage to the agency is a positive tradeoff.

That is my view.

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Senator PACKWOOD. My last question is this. What about transferring your safety responsibilities to OSHA?

Mr. RILEY. I have heard that argument raised. Let me respond to it in a number of ways.

First, whether one looks at the safety numbers of the industry, which are going down, year in and year out, or whether one looks at the intensity of our safety effort in inspections and enforcement, which is going up year in and year out, I do not believe one can make a case that the men and women at FRA are not avidly enforcing the responsibilities that they have, and effectively doing so.

I might add that virtually all 325 of our inspectors were hired from the railway unions.

Now, the type of safety responsibilities that we have, public safety, are dramatically different from occupational health and safety, which OSHA has. It is really a fish out of water should one take our responsibilities and shift them over to OSHA. They would then have to take their normal occupational health and safety responsibilities, employee related, and shift them to the broader public health-public safety front for one area.

Moreover, there has been a trend in the last 4 or 5 years to coordinate all safety enforcement within the Department of Transportation. There is good reason for that, because issues, such as those dealt with by the Hazardous Material Transportation Act and DOT's RSPA agency, cut across all of the modes. When the safety enforcement responsibility is concentrated in DOT, we can far more effectively put umbrellas over all of our individual efforts and coordinate them through the Materials Transportation Bureau, RSPA, and the Secretary's ongoing safety reviews.

To break one piece of that out of our agency and put it somewhere else would undermine those efforts.

I think what you really have here, if I could really be honest about it, is a belief by some that they would have more leverage in dealing with the Department of Labor on these issues than they have in dealing with the Department of Transportation.

But I do not believe that that ought to be the criterion by which we judge these things.

Jack, do you have anything to add on that as our Counsel?

Mr. MASON. No, I really do not.

Mr. RILEY. We have picked up much of OSHA's jurisdiction over the railroad industry, as you know, in recent years. That is why we are doing the locomotive cab occupational safety inquiry. We are concerned about working conditions in the cab.

When I interviewed for this job, I went back and read all the past hearings. What I discovered is that it is almost a rite of spring, where the industry will come up and accuse us of doing too much, labor will come up and accuse us of doing too little. At times there has been truth in one or more of those arguments. But I am prepared to stand on our record of the last 2 years because there has never been a better one.

Senator PACKWOOD. John, thank you.

Gentlemen, I have no more questions.

[The statement follows:]

STATEMENT OF HON. JOHN H. RILEY, FEDERAL RAILROAD ADMINISTRATOR

Mr. Chairman: It is a pleasure to come before the Committee today. Safety is the Department's first priority under Secretary Dole and is the primary mission of this agency. Improving rail safety is my most important objective as Administrator. Since my testimony before you a year ago, FRA has had a full plate in the area of safety—both in terms of the agency's daily regulatory and enforcement duties and in special initiatives to address particular problems or concerns, such as major assessments of the Burlington Northern and the Northeast Corridor, a nationwide assessment of Amtrak's track, and more recently, our review of the Southeastern Pennsylvania Transportation Authority (SEPTA) commuter rail operations.

In order that we may continue to implement an effective safety program, the Department recommends a two-year reauthorization of FRA's rail safety program. The Department's bill, the "Federal Railroad Safety Authorization Act of 1985," consists of safety authorization requests for Fiscal Years 1986 and 1987 and one amendment to existing law. FRA's proposed safety program funding for FY 1986 is $27,267,000. This authorization is $1,206,000 over the $26,061,000 appropriated by the Fiscal Year 1985 Continuing Resolution, and reflects an increase of field personnel to 385 positions, continued operation and maintenance of one automated track inspection vehicle, and upgraded accident and regulatory analysis capabilities.

The single statutory change we are seeking would amend the Federal Railroad Safety Act of 1970 to confirm the Attorney General's authority to seek, through a proceeding in an appropriate federal district court, enforcement of a subpoena or order of the Secretary issued under that statute. Although existing law implicitly provides for such enforcement of the Secretary's subpoenas or orders, this technical amendment would remove any doubts as to their enforceability in federal court. "The Federal Railroad Safety Authorization Act of 1985" provides FRA with the level of funding necessary to continue its inspection, regulatory and enforcement responsibilities and its high commitment to ensuring the safety of rail transportation.

THE INDUSTRY'S SAFETY RECORD

Before providing the Committee with an update of FRA's Safety Programs and achievements for 1984, I would like to highlight for the Chairman the fact that the rail industry continues to improve its safety record. Projections based on preliminary data indicate that both the accident rate per million train miles and the raw number of train accidents in 1984 were the lowest ever recorded. The projections indicate that train accidents decreased approximately 1.0 percent in 1984 compared to 1983, from 3,776 to 3,739. When normalized by train miles, which increased by 7.1 percent, the decrease in train accidents was 7.4 percent. The number of railroad employee fatalities also decreased, from 61 in 1983 to 59 in 1984; in my view, even one entry in this category is too many. The rail-highway grade crossing accident rate per million train miles decreased by 3.9 percent.

Unfortunately, despite the improvement in overall accidents and employee fatalities, total rail related fatalities appear to have increased 16.3 percent (from 1,073 in 1983 to 1,248 in 1984), an increase of 175. Nearly all of the increase resulted from grade crossing accidents and trespasser incidents. Grade crossing and trespasser-related fatalities continue to comprise over 90 percent of all railroad related fatalities. I will explain later in my testimony what FRA is doing to address these major fatality categories.

Although preliminary numbers for 1984 indicate a leveling off, the improvement in the railroad industry safety record over the past five years has been truly remarkable. Between 1980 and 1984, train accidents decreased 55.5 percent (46.7 percent when normalized by train miles); railroad injuries declined 38.2 percent; railroad fatalities declined 12.1 percent; and grade crossing accidents declined 25.3 percent. One of the most dramatic improvements has been in the area of hazardous materials transportation: between 1978 and 1984, train accidents in which there was a release of hazardous materials declined by more than 60 percent (from 138 to 54). Even more remarkable, not a single death has occurred since 1980 as a result of the release of hazardous materials from a rail car.

I commend this improvement, particularly in light of the fact that traffic volumes have recently increased, and attribute it to the dedicated efforts of both management and labor. Last month I had the pleasure of honoring a number of railroads at the E. H. Harriman Awards, which annually salute the railroads having the best employee safety records. These awards recognize truly exemplary efforts by certain carriers and their employees. Industry-wide, however, rail management and rail labor deserve an overall commendation for their continued commitment to improving rail safety.

While a decrease in train miles in the early 1980's played some part in reducing accident numbers, much of the industry's improvement in safety can be attributed to the benefits of deregulation which, since enactment of the Staggers Act, has given railroads the resources to maintain their track and equipment. The railroads have used their positive cash flow to reshape their infrastructure into a safer system; from 1979 to 1983, railroads invested $6.3 billion in track and structures. These investments have paid off, and the numbers show it—track accidents and equipment accidents have each declined 64 percent since 1979. Inevitably, problems do persist, and, as I will detail later, FRA administers its oversight duties vigorously, but the statistics clearly show that the rail industry has moved away from an era of "rusty rails."

FRA has contributed to this continued improvement in safety by maximizing the agency's full capability and available resources to be the standard bearer for the nation's rail safety laws. As the Chairman knows, FRA approaches safety as both a regulator and an enforcer. Today, much of FRA's efforts must turn to less concrete and more difficult safety issues such as grade crossing safety and abuse of drugs and alcohol, areas in which this Committee showed deep concern last year. Grade crossing accidents represent the majority of all rail-related accidents, and I have spent a significant amount of time sponsoring special inquiries to bring together the best ideas in the industry as to how to address this difficult issue. I have also initiated inquiries into subjects such as locomotive cab safety and radio communications. In certain instances, regulatory action may be necessary. In others, such as grade crossings, I continue to believe the problem will not be solved by regulatory action but by a concerted effort, similar to the drunk driving campaign that has taken hold nation-wide, to raise public perception of the problem. The agency responded to particular problems raised by a rash of accidents on Amtrak and Burlington Northern, continued efforts to complete an effective alcohol and drug rule, completed and initiated a number of other regulatory efforts, and improved enforcement efforts substantially.

Mr. Chairman, I give this introduction by way of background to what I believe was an enormously successful year, and to illustrate that, to play an effective Federal role in safety, FRA must not be just the regulator and the enforcer, but the leader in being able to bring together the best minds in industry, labor and government to address both recurring concerns and new problems. Having said all this, let me bring the Committee up to date on where we have made progress in regulatory issues and on other achievements and responsibilities.

REGULATORY ISSUES

FRA completed several important rulemakings in 1984 and thus far in 1985. Our most important effort to date has been our development of a final drug and alcohol rule. Since coming before this committee last Spring, we issued an NPRM on June 6, held hearings in Denver, Chicago, and New Orleans, and held hearings for two days here in Washington. Of all the regulatory efforts undertaken by FRA, this is the most complex and difficult. Here, we are not just developing a rule which changes operating practices or requires particular expenditures by a carrier to fix a structural problem. An effective alcohol and drug rule must balance human emotion with regulatory action. We have spent long hours since completing the hearings and I believe we are close. I hope to issue a final rule soon, but believe the time taken reflects the enormous complexity of alcohol and drug abuse.

In addition to the regulatory approach to alcohol and drug abuse in the industry, FRA is actively engaged in promoting voluntary solutions; I believe very strongly that the two approaches are both needed and complement each other. The prime example of our efforts on the voluntary side is our support of Operation: Red Block. This is a national program, formulated by rail management and labor, to promote awareness, education, and preventive action with regard to alcohol and drug abuse. A primary component of the program is the peer referral system that allows an employee to refer a coworker to a counseling or rehabilitation program without fear of causing that coworker to be disciplined for rule violations. This method is helping to break the "conspiracy of silence" that has allowed too many rail employees to endanger themselves and others by abusing drugs and alcohol. Equally as important, it focuses on the human problem at the root of such abuse, and aims at assisting the abuser through counseling and rehabilitation. Taken together, we believe these voluntary and regulatory approaches will go a long way toward removing the drug and alcohol problem from the rail industry.

Our completed regulatory actions include:

Hazardous Materials Tank Cars: The final rule (issued by the Research and Special Programs Administration) required retrofit of 3,000 hazardous materials tank cars to improve their ability to survive accidents.

Signal and Train Control: FRA substantially revised the signal and train control regulations to bring them into line with technologies developed over the last 30 years.

Commuter Track: FRA extended the scope of FRA's Track Safety Standards to include all of the nation's commuter rail operations.

Hump Yard Protection: FRA established new standards to protect employees working in hump classification yards.

Rail Passenger Cars: FRA published flammability guidelines for rail passenger cars.

Small Railroads: FRA eliminated the requirement that small railroads (with 400,000 or fewer employee workhours per year) file an annual report on testing and instruction on operating rules.

Discoloration of Freight Car Wheels: In April FRA issued a final rule to amend the criterion used to determine whether freight car wheels have become defective as a result of thermal abuse. FRA will continue to explore the problem of overheated freight car wheels, which can present a significant derailment risk. On May 13, for example, FRA will hold a public hearing on related technical questions.

In addition to completing action on several regulatory matters, FRA initiated rulemakings and safety inquiries (which may lead to regulatory action) in a number of important areas. Those important new rulemakings and safety inquiries include:

Rail-Highway Grade Crossings: FRA initiated a safety inquiry on grade crossing safety in 1984. As mentioned earlier, grade crossing accidents account for an extremely high percentage of rail related fatalities. FRA's inquiry is designed to determine what actions may be called for to address this problem.

Power Brakes: FRA initiated a safety inquiry on the use of radio telemetry devices to determine brake pressure.

Rail Passenger Cars: FRA conducted a safety inquiry to assess the potential impact of technological developments and operational changes on rail passenger equipment.

Finally, FRA has identified certain subjects that may be appropriate for rulemaking or safety inquiries during 1985. Those subjects include: The use of radio telemetry in lieu of visual observations of brake operations; expansion of the inspection force to inspect rear of train marker devices; proper protection of these new inspectors from moving equipment; the placement of cars containing volatile hazardous materials as the last car in a train; radio communications; and crew safety in locomotives.

SAFETY COMPLIANCE PROGRAM AND ENFORCEMENT

Central to FRA's safety related duties are its efforts to promote compliance with the rail safety statutes and regulations. Those efforts take many forms: routine compliance inspections, systemwide assessments of railroads, conferences with carrier officials, assistance in training employees, and enforcement of the safety laws through sanctions such as civil penalties.

Safety inspection forces

In 1984, FRA employed 325 safety inspectors, marking the first time in recent years that FRA has achieved its goal of filling inspector positions up to the authorized ceiling. In 1980, by comparison, only 295 of the authorized positions were filled. Achievement of this goal is a considerable accomplishment, given the difficulty in filling inspector positions with qualified individuals.

The practical benefits of our successful hiring program are indicated by the fact that the total number of rail safety inspections performed by FRA increased by more than 60 percent in 1984, as compared to 1980. The actual number of inspections performed in 1984 was 64,201, an increase of 6 percent over 1983. The 1984 total included 17,387 track inspections; 4,417 signal inspections; 21,571 equipment and locomotive inspections; 12,571 operating practice inspections; and 8,255 hazardous materials inspections. These routine inspections focus on compliance at a particular location. After each inspection, the railroad or shipper receives an inspection report summarizing FRA's findings.

The large increase in efficient use of the inspection forces is, of course, the result of improved management of those forces as well as an augmentation of their number. The major vehicle for this managerial improvement has been the implementation of an annual National Inspection Plan. The 1985 Plan sets forth in some

detail each FRA region's plans regarding inspections, manpower utilization, priorities, and goals.

Safety assessments

In recent years FRA has developed safety assessments as an important new compliance tool. Safety assessments may be performed on a systemwide basis, which entails a review of all aspects of a railroad's operations, or may be more narrowly focused on an organizational element of the railroad (such as a division) or a particular discipline (such as track). In a systemwide assessment, an FRA task force comprehensively evaluates all aspects of safety on a railroad: track, signal systems, equipment, operating practices, hazardous materials procedures, accident reporting, personnel training and deployment, and safety records. After completing the evaluation, FRA prepares a report of its findings and recommendations for remedial actions and provides a copy to the railroad. Senior FRA officials then meet with the railroad's management to discuss the report and to devise solutions to the problems found during the assessment. The success of an assessment depends largely, of course, on the effectiveness of FRA's follow-up procedures. We are conducting a complete review of those procedures to ensure that follow-ups are more thorough and more timely than before.

FRA completed systemwide assessments on five railroads in 1984: Amtrak, Burlington Northern, the Chicago and Northwestern, the Delaware and Hudson, and the Alaska Railroad. The Amtrak assessment included a nationwide review of all of that railroad's track, plus a detailed look at all safety-related aspects on the Northeast Corridor. Our findings were encouraging in nearly every respect, although we did highlight for Amtrak some areas in need of improvement. The Burlington Northern assessment, on which we are preparing our final report, should lead to significant improvements in certain aspects of that carrier's operations. For 1985, we have begun or plan to begin three systemwide assessments. For example, we have begun the assessment of the Southeastern Pennsylvania Transportation Authority (SEPTA) to ensure that its operational practices and equipment are safe for the transportation of the thousands of commuters who ride its trains daily. These assessments offer distinct advantages over individual compliance inspections in situations where FRA desires to gain an overall view of a railroad's safety program and to address systemic problems through contact with high-level railroad management.

Enforcement

Consultations between FRA safety inspectors and railroad and shipper representatives often suffice to alleviate compliance problems revealed by an FRA inspection. FRA has always used the civil penalty sanctions available to it judiciously, i.e., when that route appears most likely to improve compliance. At times, compliance can be more readily improved by consulting with carrier officials and holding the threat of penalties in abeyance. At other times, FRA inspectors may note a number of defects of a technical nature, but because the overall level of compliance observed during their inspection was quite satisfactory, choose not to seek penalties for the technical violations. This discretion, exercised daily by FRA inspectors throughout the safety program's history, must be preserved because it permits our inspectors to multiply their effect several-fold beyond those violations severe or persistent enough to warrant penalties. Rather than investing the time to build a case sufficient to support the assessment of civil penalties for every defect they find, the inspectors are free to inspect far more extensively and frequently, reporting their findings to the railroads in summary fashion, and saving penalties for where they are needed. Were we denied such discretion, the resulting paperwork and greatly increased civil penalty workload would swamp this agency's resources, with probable deleterious effects on rail safety.

Unfortunately, rail labor has challenged the exercise of this discretion in numerous lawsuits during the past few years; more important, its legislative proposal to expand its standing in Federal courts to challenge all non-emergency enforcement decisions threatens to open the floodgates to such litigation. FRA inspectors have plenty of useful work to do without having their enforcement decisions second-guessed at every turn. We welcome and need rail labor's support and full cooperation in our safety efforts, but we believe their current litigation posture and legislative proposals on this issue are inappropriate. Moreover, rail employees are adequately protected against any abuse of FRA's discretion by existing law, which gives them standing to challenge FRA's failure, without any reasonable basis, to issue an emergency order to protect them against imminent physical injury. I would note that labor has not yet succeeded in persuading any court that FRA has abused its discretion on these emergency matters.

In some situations, of course, the best method for obtaining compliance is the use of the various enforcement tools at FRA's disposal. The enforcement tool most often relied on is the civil penalty. An inspector's recommendation of a civil penalty takes the form of a violation report. The report is reviewed in FRA's Office of Chief Counsel, which forwards all legally sufficient reports (i.e., over 95 percent of those received) to the carrier or shipper with a demand for civil penalties. Cases involving especially serious safety hazards are accorded top priority, and are transmitted to the shipper or carrier immediately.

In nearly all cases, a settlement is reached at a compromised amount, as authorized by the rail safety statutes. The negotiation process is itself a valuable exchange of views on safety issues and often produces specific commitments to improve compliance. In Fiscal Year 1984, FRA collected $3.7 million in civil penalties, more than it has collected in any year since 1980. And already in Fiscal Year 1985, FRA has collected approximately $5.8 million.

In my judgment, for a civil penalty to have its intended effect, it should be assessed as soon as possible after the event that precipitated it. Accordingly, in 1984 FRA reduced the average transmittal time (i.e., the time between the receipt in the Chief Counsel's office and the mailing of the civil penalty demand letter) by 32 percent compared to 1983 and 55 percent compared to 1982. Top priority cases, which are those involving serious violations that caused or created a substantial risk of death, injury, accident, or hazardous materials release, are identified early and receive expedited treatment. The Chief Counsel's office has also taken a number of steps to shorten the time required to negotiate a settlement of these claims after transmittal of the initial demand letter; this negotiation period is typically the longest portion of time elapsing between occurrence of the violation and ultimate collection of the penalty.

In summary, FRA has made steady improvement in its compliance and enforcement program by increasing the number of inspectors and inspections, more effectively managing the use of its inspection resources, continuing the use of system assessments as an effective complement to routine inspections, and emphasizing timely transmittal and collection of civil penalties where such sanctions appear necessary to improve compliance.

STATE PARTICIPATION FUNDING

The State Participation Program was established in 1970 to provide states with an incentive to participate in FRA's safety enforcement program. Given the maturity achieved by the state programs over the past 15 years and the limited resources available to FRA, we continue to believe that the states are now able to assume full responsibility for the salaries and related costs of their inspectors. Accordingly, we do not recommend continued federal funding of grants-in-aid for this program. However, we will continue to broaden the responsibilities assigned to state inspectors and to provide training for them.

There are currently 32 states participating in this safety grant program with 103 safety inspectors. Based on a 1984 FRA survey, most of the states currently participating would fully fund their state railroad safety program in the absence of matching funds from FRA. FRA estimates that 28 of the 32 states (with 70 of the 103 inspectors) would continue to participate without the matching funds The increased cost to each state in the absence of Federal subsidies would be small (approximately $109,000 on average) and should not present an insurmountable burden for the states.

OTHER FRA ACCOMPLISHMENTS

While not part of the rail safety reauthorization request, FRA's research and development activities are certainly part of the improving rail safety picture. The recent gains in railroad safety present FRA with challenges and opportunities to target its resources on evolving new technologies and more sophisticated railroad operations of the 1980's. We will continue to work closely with the industry to anticipate and mitigate threats to public safety in advance of the occurrence of potentially catastrophic accidents. Our current planned research in areas such as nuclear waste casks, hazardous materials tank cars, wheel safety testing, vehicle safety testing, and emergency response procedures, are prime examples of the new direction we have taken in our R&D program.

SAFETY INITIATIVES

Grade crossings

I have previously explained that grade crossing fatalities comprise the vast majority of rail related fatalities each year. FRA's continuing concern about this problem prompted us to initiate a special safety inquiry on the subject, referred to earlier. That inquiry entailed public hearings across the country in 1984 and January 1985, at which we explored all feasible alternatives to improve the situation. We are analyzing the comments to determine whether any regulatory or additional non-regulatory actions are appropriate.

At the same time, FRA's support of Operation Lifesaver, a public education program which focuses on grade crossing safety, has continued at a higher level than ever before. FRA inspectors will participate in over 1,200 Operation Lifesaver presentations in 1985. At these presentations, FRA personnel inform school and civic group audiences about the dangers inherent in rail-highway grade crossings and the risks associated with trespassing on railroads. FRA and FHWA are also working together to illustrate the efficacy of low-cost approaches for improving the safety of low volume crossings that do not merit the major expense of automated train activated warning devices.

Safety training

Nearly one third of all railroad accidents, and a far greater portion of the most serious rail accidents, are caused by human error or failure to follow safe operating practices. We believe that many of these accidents, and the resulting casualties, could be avoided through improved carrier training programs. FRA has recently expanded its training activities substantially to assist railroads in training employees, particularly in the handling of hazardous materials. The major innovation in this area was our hiring of four regional training specialists who will have primary responsibility for coordinating FRA's training efforts. FRA's training program includes seminars on federal safety requirements for rail management and labor and on-ground supervision to ensure uniform understanding of those requirements.

In summary, the rail safety picture has generally continued to improve, and FRA's efforts to encourage that improvement have, and will, continue unabated. My personal observations of rail accident sites in the past year have underscored my commitment to eventually identify and eliminate the leading causes of train accidents and related fatalities.

Mr. Chairman, this concludes my prepared statement. My associates and I would be happy to respond to any questions that the Subcommittee may have.

[The following information was subsequently received for the record:]

FEDERAL RAILROAD ADMINISTRATION,
Washington, DC., May 8, 1985.

Hon. BOB PACKWOOD,
United States Senate, Chairman, Surface Transportation Subcommittee, Committee on Commerce, Science and Transportation, Washington, DC.

DEAR SENATOR PACKWOOD: I would like to make several points for the record in response to the testimony offered by Larry Mann, attorney for the Railway Labor Executives' Association.

REQUIREMENT THAT NAMES OF COMPLAINANTS NOT BE REVEALED DURING CIVIL PENALTY PROCESS

Contrary to Mr. Mann's assertion, if a complainant does not choose to reveal his name, FRA does not disclose it. In a very small percentage of FRA cases, the violation can be established only by the testimony of an eyewitness. That is, FRA did not observe the violation and cannot substantiate its occurrence with documents available in the carrier's files. In these cases, we give the complainant his choice. If he wishes to reveal his identity, the witness (who is usually also a complainant) is given an opportunity to sign a witness statement setting forth the factual allegations on which the claim is based, and FRA processes the claim. If he elects not to reveal his identity, we do not reveal it. If the nature of the complaint would inevitably identify the employee, we do not prosecute it.

FRA has never demanded a civil penalty from a railroad or shipper without providing the supporting evidence. Any attempt to do so would certainly meet with a refusal to negotiate, let alone pay the claim. Thus, if legislation prohibited the use

of witness statements, we would simply not process any violation dependent on such a statement.

In short, the legislation is absolutely unnecessary. The only witness whose names are revealed to the railroads are those who sign statements permitting such information to be revealed. Contrary to labor's assertions, this practice did not begin in 1984; FRA has used such statements for many years.

DISPATCHER TRAINING

We have not established national training standards for dispatchers because the responsibilities and operating practices assigned to dispatchers vary widely from region to region and carrier to carrier. In addition, we have not observed a pattern of training *related* problems that would justify the investment of resources in a rulemaking on dispatcher training. Instead, existing FRA regulations require each railroad to (1) file with FRA a copy of its operating rules, timetables, and special instructions; (2) train all employees, including dispatchers, on the meaning and execution of those rules and instructions; and (3) conduct efficiency tests and inspections to determine the adequacy of training and the level of rule compliance. We require the carriers to release the results of those tests to FRA. We review those results and regulate the effectiveness of the industry by doing so. FRA monitors the railroads for compliance and penalties are assessed for violations of these rules.

ACCIDENT/INCIDENT REPORTING

Let me clarify the distinction between train accidents and injuries, or "incidents."

Train accidents are the basic measurement of the railroad industry's safety performance. The term is broadly defined to include any event (including collisions and derailments) that involves the operation of on-track equipment and results in reportable damage to track or equipment in excess of $4,900. Since it is difficult to imagine any event involving moving equipment that would not generate damage in excess of $4,900, this is an extremely broad measure, and has often been criticized for being too inclusive. Even a hard coupling—the railroad industry's equivalent of a fender bumping—invariably generates damage in excess of the reporting threshold. We have not altered the index, however, other than through application of a biennial inflation factor, because its continued maintenance is the key to true comparability between today's accident statistics and those of past years.

In our reporting terminology, injuries and incidents are nearly identical concepts. Any event which results in a death, or a reportable injury or illness, but in which there is no property damage, or in which railroad property damage does not exceed the reporting threshold is called an incident. Our statistics on injuries include those resulting from both incidents and train accidents. As you will recall, I cited that data in my opening remarks, telling the Committee that employee fatalities were down 3.3 percent last year, to a new all time low, and that while injuries had gone up about 12 percent, their severity did not.

It is essential to recognize that our injury reporting statistics are not strictly a public safety measure. Consistent with the Occupational Safety and Health Administration's (OSHA) standards for all industries, the Federal Railroad Administration (FRA) requires railroads to report even minor occupational injuries and illnesses. Any injury that requires medical treatment or results in restriction of work or motion, or any other occupational illness that is diagnosed by a physician must be included in the reporting category. The great majority of nontrain incidents are common workplace injuries, such as cinders in the eye, back strain from throwing a switch, and the types of minor hand and finger injuries that are connected with the use of tools in the workplace. While no one makes light of these injuries, and in fact both we and the industry make significant effort to enhance workplace safety, it is important to recognize in the context of this hearing that this type of workplace incident tends to fall in the category of workplace or occupational injury, and does not arise from activities regulated by FRA. Nor would these types of injuries be addressed in any way by the types of amendments offered by the representatives of railway labor.

As stated, in compiling the aggregate numbers on injuries, those injuries that occur from train movements where there is no accident or collision, or where the damage from a derailment is not in excess of $4,900 are included. But here again, even looking at the totality of employee injuries, 62 percent did not result in even one day of lost work time. Based on OSHA statistics, the railroads' occupational injury rates have been better than the injury rates for the other modes of transportation as well as those recorded in the construction and manufacturing industries.

I want to take great pain to emphasize that we do not take any category of injury included in our reported data lightly. In fact, FRA's decision to go beyond normal public safety regulations and consider employees' safety within the locomotive cab is a reflection of our commitment to addressing occupational as well as "public safety" exposures. We work closely with OSHA, which also has jurisdiction in the railroad workplace, to maximize employee safety. I am simply making the point that these statistics do not diminish the validity of the broader points made by FRA in its accident reporting data. Moreover, contrary to the assertions made by Mr. Mann, these are precisely the same numbers that I reported to the Committee in my opening statement.

Yours very truly,

JOHN H. RILEY,
Administrator.

Senator PACKWOOD. Let us move on to Mr. Lawrence Mann, accompanied by Mr. R.T. Bates, Mr. C.E. Wheeler, and Mr. Robert Johnson.

STATEMENT OF LAWRENCE M. MANN, ATTORNEY, RAILWAY LABOR EXECUTIVES' ASSOCIATION, ACCOMPANIED BY R.T. BATES, PRESIDENT, BROTHERHOOD OF RAILROAD SIGNALMEN; AND ROBERT JOHNSON, PRESIDENT, AMERICAN TRAIN DISPATCHERS' ASSOCIATION

Mr. MANN. Good morning, Mr. Chairman.

Senator PACKWOOD. Good morning, Mr. Mann.

I might ask you to do the same as I asked of Mr. Riley. Because I had a chance to read your entire statement, if you would put it into the record and abbreviate it, I would appreciate it.

Mr. MANN. I will, Mr. Chairman.

To my left, Mr. Chairman, is Mr. Tom Bates, president of the Brotherhood of Railroad Signalmen; and to my right is Mr. Bob Johnson, who is the president of the American Train Dispatchers' Association.

This testimony, which I will be giving, Mr. Chairman, is on behalf of Mr. Jim Snyder, who, as you may know, has not recuperated yet. Safety is very dear to him, and if he could be here in any way, shape, or form, he would be.

First, Mr. Chairman, I must discuss some statistics with you, just for a few moments.

Mr. Riley quoted a number of statistics dealing with accidents. You have to distinguish in the railroad terminology of mishaps between "accidents" and "incidents."

"Incidents," as distinguished from "accidents," are any kind of mishap where the physical property damage does not exceed $4,900; in 1984 it was $4,500.

Last year, comparing train incident fatalities with train accident fatalities, there were 515 fatalities in incidents, as opposed to 63 fatalities in accidents.

Mr. Riley was testifying how the accident rate decreased. But to give you an example, if a car inspector happens to be inspecting two cars and his arm is cut off because he was crushed between them, that is an incident because the property damage did not exceed $4,500 last year.

The point I want to make is this. There is an entire body of statistics dealing with incidents, where the figures are much higher than they are in the accident data.

Senator PACKWOOD. Higher and worsening?

Mr. MANN. Yes, sir.

For example, in incidents last year, there were 5,182 incidents in 1983; in 1984, there were 5,528 incidents. That is where the property damage is below $4,500. Most of the personal injuries occur, not in a train collision, but in the yards or in the shops.

To compare that with accidents, in 1983, there were 502 accidents which caused injuries. In 1984, there were 893—almost six times as many as there were incidents. You did not hear that information from Mr. Riley.

Concerning grade crossings, in 1983 there were 2,623 injuries at grade crossing mishaps; in 1984, there were 2,911. Fatalities were up 12.7 percent.

The point I want to make, Senator, is they are not the roses that you have heard. There are problems out there and we have detailed that in the testimony.

What I would like to do, Senator, is spend most of the time dealing with the amendments we are seeking.

Since you raised the issue of standing first, Mr. Chairman, I am the one who has handled that litigation, I presume, as opposed to any other lawyer in the country, on behalf of rail labor. I am aware of four cases. Mr. Riley has said that he has not lost a case. Well, I am going to submit for the record, [1] Senator, the four cases with the decisions. The good guys have one two and the bad guys have one two. There is one eleventh circuit decision that makes it very clear that rail labor does have the right to bring an action where the administrator does not comply with the law.

That is all we are asking for, Senator. We are not asking to go in and out of Mr. Riley's discretion. We are talking about areas where Congress has set the standard, and where the Federal Railroad Administration has not complied with that standard. That is all we are asking for, that right to go into the courts and let an unbiased official, the judge, tell us whether or not they have complied with the law.

Mr. Riley says that we are going to just flood the courts with lawsuits. That is ridiculous if you look at our history.

Since 1970, not counting the ones that are currently pending in the courts, I counted 12 cases that were actually litigated that dealt with rail safety and the failure of the administrator to enforce. Those were the only ones that were actually litigated.

There were some other cases, not many—I think four or five—that were filed, but they were resolved immediately.

The next issue deals with harassment, Senator.

Your committee last year unanimously approved the amendment which we are seeking here again today. The problem with the existing law, Senator, is that it does not come into play unless a man or woman is actually fired.

The great majority of cases involving harassment is the situation where an employee is not fired, but is merely harassed on the job. What we are asking for is the opportunity for two things. One is in the appropriate case, to have some recourse; that is, punitive dam-

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[1] The submissions were retained in the committee files.

ages, if, in the discretion of the arbitrator or the court it is determined that this case warrants some punitive damages.

Senator PACKWOOD. Are there other employees that we treat that way? Other classes of employees?

Mr. MANN. Well, in the OSHA law there is a provision for harassment, Senator. It does not permit punitive damages.

Senator PACKWOOD. In what other classes of employees do you have access to the courts for harassment?

Mr. MANN. Senator, I am not familiar with any.

The problem with going through the public law boards, which is the arbitration provision, is that the cases simply do not get resolved.

We do not have a strong objection, Senator, to going through the administrative procedures of the public law boards. The problem is that we cannot get them resolved. There is no basis at the moment, at least, to get recourse in the situations where the employee is not fired.

Senator PACKWOOD. Is this simply because of the bureaucracy, where it is just tediously slow, and you may or may not get justice at the end, assuming you ever get to the end, but getting to the end is the problem?

Mr. MANN. Yes, sir. That is one problem.

Last year, Senator, the House, which was reported by the subcommittee last week, has a provision that requires the public law board to rule expeditiously, to give these types of cases priority treatment.

We find that a sound approach. If, in your wisdom, you find that the court is not a feasible alternative for the employee, then certainly we would look kindly upon some kind of redress by a quick method, rather than sitting back several years with a man out of work or whatever the case may be.

There are several other amendments, Senator. One deals with the whole issue of employees whose names are disclosed to a railroad whenever they send in a violation notice to the FRA. What happens is—and this has only been recently, since last year—the FRA tells the railroad the name of the employee. This has set up a number of cases of harassment.

What we are seeking, Senator, is that the name of the employee not be disclosed until such time as the Federal Railroad Administration actually brings an action for enforcement. Give them the substance of everything, just delete the man's name so that he would not be subjected to harassment.

We have any number of cases that we could bring to your attention, which shows that the employees are reluctant, all of a sudden, because they are targeted. Once they become targeted, they are always targeted. Any little thing will subject them to some kind of discipline.

So, we hope that Congress will look upon this as something that would curtail any opportunity for harassment and still give the railroads the full scope of the substance of what the violations are.

Another situation that you heard Mr. Riley touch on was the human factor elements in accidents and incidents, injuries, et cetera.

Well, right now the railroads alone are the ones that determine what are the causes of accidents. They alone do that—not the FRA and not rail labor. These statistics are compiled by the Federal Railroad Administration, and this is what Congress, the public and rail labor rely on to make decisions.

Approximately 25 percent of the accidents are attributable to "human error." In those cases, we would like the opportunity for the employee that is affected or involved in that alleged violation, to have the opportunity to state on the accident form what he or she considers to be the cause of the accident. In that way, you would have a balanced system, at least, for someone to review, if they were of a mind to review it.

This brings me to another point relating to human factors. In the research and development programs of the Federal Railroad Administration, I reviewed a list of what they researched last year, and not one of them dealt with human factors. Literally all of them dealt with equipment. Obviously equipment relates to safety, but human factors deal with safety also, and there should be something earmarked in research and development for human factor studies. What causes these accidents and injuries attributed to human error? We would hope that, at least in the first instance, Congress would permit us to state on the accident report form what the employee thinks caused an accident.

The next amendent, Mr. Chairman, deals with who should do the inspecting and testing when a train is assembled. I would like to review with you what is required when train is assembled. First, we have a body of regulations dealing with initial terminal tests and inspections. This is basially the power brake inspection, to make sure that the brakes work, and that the piston travel on each car is not excessive, so that if the brakes are applied, they will be effective.

Then there are also the freight car standards, which cover many pages of regulations. Also, there are the hazardous materials laws which have to be complied with.

All of these regulations have to be complied with when a train is assembled.

At the present time, the railroads nationwide are requiring operating crews to perform these tests.

Generally, the operating crews are not being trained to perform these tests. Most of the operating crews have been doing certain limited initial terminal tests over the years at outlying points, but they have rarely, if ever, performed the initial terminal tests at the main terminals, where the trains are assembled. They have not been trained to perform the detailed tests and inspections for freight car standards at all.

We are only asking that they be trained.

Now, Mr. Chairman, I would like to turn over the last two amendments that we are seeking both to Mr. Bates and Mr. Johnson to explain those amendments.

Senator PACKWOOD. Gentlemen, go right ahead.

Mr. BATES. Thank you, Mr. Chairman.

We are pleased to be able to be here to tell you why we think there should be Federal rules, standards, and instructions for the

proper installation, testing, maintenance, and inspecting of rail-highway grade crossing protective devices.

To begin with, it seems completely without any reason that the Federal Government would spend millions of dollars for the installation of these protective devices and not have any Federal rules that require that they function or function properly.

There are no rules. In some States there are rules that are very minor. We think that there should be Federal rules that require the railroads to properly test, inspect, and maintain those crossing protective devices. We think the public deserves that.

There are no public records kept to disclose the number of malfunctions of those devices by anyone. The only people who know that are the railroad people. We would like to know just how many of them are malfunctioning.

The FRA only investigates accidents at rail-highway grade crossings that have at least two fatalities. Other accidents are not even investigated by anyone other than the State authorities.

We do not believe the crossings are properly maintained, tested, and inspected, because of the large numbers of accidents at crossings and from our own personal observations. Some railroads do not even have rules that require periodic testing, inspection, and maintenance. Other railroads that do have those rules simply tell the employees to forget about them. When something that they consider to be a higher priority for the operation of the railroad comes up, they tell the employees just forget about the testing, inspection, and maintenance chores.

There are a number of reasons why we think Federal rules are needed.

We do not think it would be any burden upon the railroad or the FRA to have those rules issued.

Just as a personal observation, we have heard many times when the AAR testifies about grade crossing accidents, they discuss those cases where automobiles run through gates and hit the side of a train. They suggest that protective devices do not work because the public disregards them.

I personally saw within the last few months a set of crossing protections where the gates did not even have lights on them. Even though they are designed to have lights on the gates, there were no lights on those gates.

If we had time to go out and check all the crossings in the United States, we might have a good explanation of why automobiles run into the sides of trains.

Thank you, Mr. Chairman, for listening to me. We hope you will consider what we are asking.

Thank you.

Senator PACKWOOD. Thank you.

Mr. JOHNSON. Mr. Chairman, I will try to be very brief in talking about the train dispatchers. The train dispatchers are not unlike the air controllers. We do for trains what the air controllers do for airplanes—we try to keep them from hitting one another.

However, in the past few years, we have encountered the terrible problem of not being able to have sufficient forces and proper training for the train dispatchers. We have approached the carriers

in every direction that we can to try to get them to remedy the situation and have failed to do so.

For instance, this morning, in West Chicago, on the CN&W, fewer people were dispatching trains there because the railroad had no one to fill the positions. They had to reduce a desk in order to fill the permanent positions in the office. They have no one in training.

I met with them last week requesting that they do something about this and they said they were trying to find someone.

At a minimum, they are going to have to train those people from 4 to 6 months once they find them. Those people are going to be bleeding very badly in west Chicago before they can get relief.

As a result of the Motley, MN, head-on collision that killed five people, there was an inexperienced dispatcher who was dispatching on that night. It was the second hour of the second day after which he had assumed the authority of train dispatching, and he obviously forgot about one train and they hit head-on.

As a result of that accident, we were very persistent with the Burlington-Northern, got their cooperation, and we did reach a collective bargaining agreement, that eliminates the problem of obtaining and training employees and the disciplinary process that is therein involved.

We have a problem all over this country. For instance, the accident at Robbins, SC 2 months ago. There, a dispatcher was involved who the Seaboard System insisted train for the position on his own, without any pay whatsoever. He had had to qualify on all positions in the office, all tricks which was something like 25. He did so, and they allowed him to begin to work after only 3 months time.

He was involved in this accident, a rear-end collision. It was daylight, and the three people on the head-end jumped to keep from being killed. They were injured.

As a result of that accident, the Federal Railroad Administration had their people on the scene in Florence, SC. One of the Federal Railroad Administration safety officers who was inspecting that situation was very adamant in his position that something should be done at Florence, SC to increase the force.

The same carrier was involved at Waycross, GA, wherein we inspected their office. The inspector, one of our vice presidents, went in at 7:25 a.m., when the first trick person was beginning to take the transfer. He sat and watched this person all day long, and this person did not eat, did not go to the bathroom, did not get a drink of water. He had two sips of coffee, all day long, from 7:23 until he was finally relieved at 4:30 p.m.

On the major railroads we have this problem all over the country. We have an agreement with the carriers that has been in effect since 1937, wherein if we have a situation of this sort, we can file a claim and sometime within 90 days to 6 months we can go onto the property and investigate the matter.

We have a situation now where we the "sponge" theory is applicable; that is, once a sponge becomes completely saturated, there is no more that you can put into the sponge.

The train dispatcher's brain, we feel, has reached that saturation point in most instances. It cannot absorb any more information.

The technological changes, such as centralized traffic control, track warrants, radios, hot box detectors—all of those things have been placed into the dispatcher's office as a result of the technological changes and duties taken from other people in the field who were doing those jobs. In the dispatcher's office, he has so many things to think of that his mind has become completely saturated, and we are seeing people with 30 and 35 years of clear records making dumb mistakes. We feel it has reached a point where the people can no longer assume more responsibility.

Very quickly, I will read a letter which was not solicited, but it came across my desk. It was addressed to one of our general chairmen. It spells out very clearly what we are faced with. "Secondly, I wish to point out that the desk at which I work has 1 telephone instrument, with 5 extensions, and 3 intercoms; a console with 15 radio extensions and nine intercoms; 6 dispatcher intercoms and 6 dispatcher monitors; 2 separate New York phones and 1 separate radio. The room in which I work is approximately 10 by 20 feet, and there are six desks with five other people working there." And so on.

There is no training consideration given for these people. No matter where we go or what we do, we keep on running up against a brick wall with the carriers, with the exception of the Burlington-Northern. We have had no problems on the Burlington-Northern since we negotiated that agreement and the Burlington-Northern is properly training their individuals.

Senator PACKWOOD. Let me ask you a question.

What you are saying is that you have succeeded through collective bargaining with the Burlington-Northern.

Mr. JOHNSON. Yes, sir.

Senator PACKWOOD. Why is that not possible with other railroads?

Mr. JOHNSON. They are turning a deaf ear. They say it costs too much money. We keep asking them what is the cost of one life that might be saved by properly training these train dispatchers. We cannot get them to negotiate with us.

Senator PACKWOOD. OK.

Mr. JOHNSON. Senator, in 1938, with HR 4358, the train dispatchers were training to get a 6 hour day. We have tried to get a meal period for our people to break the tense moments that they are under. Obviously they have at all times peoples 'lives at stake, since a mistake of a train dispatcher can cost peoples 'lives at any moment. Why the carriers keep insisting on shoving us to the back office, putting us all in one small room, without any help at all or trying to get better communications, I don't know.

Senator PACKWOOD. I will have to ask you to draw to a close, if you will, please.

Mr. JOHNSON. All right, sir.

Let me give you one quick scenario. In Buffalo, NY, Conrail installed a new communications operation. They placed earphones on the train dispatchers and actually the train dispatcher could have two conversations coming into his head at one time—one in each ear.

We had to threaten self-help to get that taken away and to arrange where it could be safe.

We have this all over the country, Senator. I think we need your help very badly because we have approached the carriers, we have approached the Federal agencies, and we are getting no help whatsoever.

Thank you very much.

Senator PACKWOOD. Gentlemen. I have no other questions.

This was an excellent presentation. I appreciate it. Give my best to Mr. Snyder.

Mr. MANN. Thank you.

[The statement follows:]

STATEMENT OF J.R. SNYDER, RAILWAY LABOR EXECUTIVES' ASSOCIATION

My name is J.R. Snyder. I am the National Legislative Director of the United Transportation Union. I am appearing today as Chairman of the Safety Committee of the Railway Labor Executives' Association. Accompanying me are R.T. Bates, President, Brotherhood of Railroad Signalmen, C.E. Wheeler, General President, Brotherhood of Railway Carmen of the United States and Canada, Robert Johnson, President of the American Train Dispatchers' Association and Lawrence M. Mann, attorney for RLEA in this matter. The RLEA represents all the crafts of the railroad workers in this country.

STATISTICS

We are unhappy to report that in every major safety category the statistics have become worse since last year. The category of rail-highway crossing accidents more directly affect the general public than other categories. The chart below will demonstrate the comparison during 1983 and 1984.

ACCIDENT STATISTICS AT PUBLIC AND PRIVATE CROSSINGS

	All accidents	Fatalities	Injuries
1984	7,276	648	2,911
1983	7,161	575	2,623

The overall statistics covering accidents (incidents excluded) and deaths during 1983 vs. 1984 are close. There were approximately 3,900 accidents in both years. In 1983 there were 50 deaths and in 1984, 63 person died in accidents. Injuries in 1984 nearly doubled. There were 893 injuries sustained in accidents during 1984 as compared with 502 injuries in 1983.

It is interesting to observe that the statistics testified to by the FRA Administrator previously were very selective, and therefore does not give a true picture of the data. The Administrator accurately points out that fatalities increased, but he failed to point out that injuries sustained during the same time period nearly doubled in 1984. Also, why didn't the Administrator discuss the train "incidents" which result in more deaths and more injuries than occur in "accidents". The FRA, in its earlier testimony, compared 1980 statistics with 1984 results. That is like comparing apples and oranges. First of all the number of employees in 1980 totaled 480,410 and in 1983, there were 341,500 employees. There were 428.5 million train miles operated by the railroads in 1980 and only 345.9 million train miles in 1983. The 1984 figures are not available yet. Also the threshold monetary value for an accident has increased from $2,900 in 1980 to $4,500 in 1984.

In understanding the figures supplied by FRA it is necessary to distinguish accidents from incidents. Accidents are defined as a collision, derailment, or other event involving the operation of railroad on-track equipment resulting in physical property damages that exceed $4,900.00 for the 1985–1986 period. The threshold figure established by FRA during 1983–1984 was $4,500.00. The key to classifying an event as an accident is how much property damage was involved.

A train incident is an event involving the movement of railroad on-track equipment that results in a death, a reportable injury, or a reportable illness, but in which railroad property damage does not exceed $4,900.00. A non-train incident in an event arising out of railroad operations but not from the movement of on-track

equipment, which does not exceed $4,900.00 in property damage, and results in a death, a reportable injury or a reportable occupational illness.

The train incident statistics need to be included for a complete representation of what's happening in rail safety. The chart below gives those figures fo: 1983 vs. 1984.

TRAIN INCIDENTS

	Train incidents	Deaths	Injuries
1984	6,126	515	5,528
1983	5,679	432	5,182

Any way the FRA and the railroads attempt to twist the figures, the bottom line is still the same—safety was much poorer in 1984 than in 1983.

The logical question to be posed by your Committee is why have the safety statistics worsened in 1984. The answer is obvious to the rail workers who operate every train, perform all of the inspections when allowed by railroad management, and observe on a 24-hour basis 7 days a week what is happening. The FRA does not do its job in assuring that the railroads comply with the safety laws adopted by Congress and the implementing regulations. There are few incentives for railroads to comply. In the first place equipment may not be inspected even once a year by the FRA. Under the FRA's policies, even if a defect is discovered by a FRA inspection, the railroad is first given a chance to correct the violation. If the railroad still does not correct the defect, then only will FRA take action. The word "action" is used in its broadest terms because there is a slim chance FRA will impose a fine. For example, in 1984 the FRA inspectors discovered 53,317 defects of the freight car standards and FRA sought fines in only 896 reports. Furthermore, the fines are compromised under the Federal Claims Collection Act. It is clear to anyone having knowledge in rail safety that FRA's enforcement is a sham. If the FRA is not going to be any more than a surrogate for the railroads, its functions should be absorbed into another agency such as OSHA. For this budget conscious Congress, substantial sums of money could be saved by transferring the jurisdiction.

Another chart may be informative to your committee in its deliberations. The chart compares the defects discovered versus the violation reports filed in 1984.

I. Cars (Freight Car Standards):	
Cars inspected	1,031,644
Defects	53,317
Violation reports	896
II. Safety appliances:	
Defects	46,937
Violation reports	[1](1,583)
III. Power brake:	
Defects	42,712
Violation reports	[1] (1,583)
IV. Locomotives:	
Locomotives inspected	37,123
Defects	24,495
Violation reports	240
V. Track:	
Miles inspected	334,095
Defects recorded	88,041
Violation reports	129
VI. Signal:	
Miles inspected	22,611
Defects recorded	8,534
Violation reports	83

[1] The violation reports for safety appliances and the power brake defects are combined by the FRA.

Concerning the new authorization, we urge your Committee not to reduce the authorization that was enacted for FY '84, $31.4 million, plus $2.9 million for the State safety program. This same authorization would allow for the hiring of 30 additional inspectors, 10 each for motive power and equipment, signals, and track. The Admin-

istration is seeking once again to gut the state program. Fortunately, your Committee has recognized the importance of retaining the states role in rail safety.

Now I would like to direct your attention to much needed changes in some of the safety laws. During the last session of Congress, you dealt with some of these issues and the Bill passed in the House of Representatives unanimously. The Senate did not vote on the amendments before adjournment. These proposed amendments will go a long way in reducing the hazards that exist on our nation's railroads.

MAINTENANCE, TESTING, AND INSPECTION STANDARDS FOR GRADE CROSSINGS

Grade crossing accidents continue to be the highest cause of casualties on the railroads. As previously mentioned, accidents at rail-highway crossings increased last year from 7,161 in 1983 to 7,276 in 1984. Fatalities were 12.7% higher, and injuries increased 14.8%. The FRA Administrator in earlier testimony pointed out that rail-highway grade crossings and trespasser related fatalities comprise over 90% of all railroad fatalities. Congressional financial support for upgrading crossings and greater public awareness of "Operation Lifesaver" has been effective in improving safety. However, that is not enough. There needs to be regular testing, inspection and maintenance of the crossings.

The federally funded traffic control systems at crossings have greatly improved the safety for the traveling public. Still, only about one-third of the public grade crossings have active devices such as bells, lights, or gates. The overwhelming majority of crossings are marked only with a cross buck sign. Many have no protection at all. The Department of Transportation, in earlier studies, pointed out that if 15,000 additional crossings were provided with improved protection, accident costs would be reduced nearly three times that of the installation and maintenance costs of the improvement.

The ironic aspect of this critical safety area is that there are no Federal regulations requiring adequate maintenance, inspection and testing of grade crossings. The National Transportation Safety Board has been critical of the DOT's failure to take corrective action against defective warning devices and poorly maintained grade crossings. In 1975 the Brotherhood of Railroad Signalmen and the Communication and Signal Division of the Association of American Railroads jointly prepared and recommended to FRA the adoption of minimum installation, inspection and maintenance regulations. Unfortunately, the FRA did not adopt the regulations because of opposition from a major carrier within the AAR, and FRA's determination that there were few grade crossing accidents caused by malfunctioning warning devices. The FRA's reliance on the statistical data was misplaced for obvious reasons. Generally there are no investigations of defective crossings unless a death occurs, and there are no requirements for reporting malfunctioning crossing devices. Moreover, the statistics upon which FRA relied were generated solely from accident reports submitted by the railroads. After a grade crossing accident has occurred, a railroad's potential exposure to liability is incentive enough for it to assert that the signal system was operating properly. Relying on the railroad industry's self generated statistics is like placing the fox at the gate to guard the chicken coop. There are numerous ways in which a signal system may fail to operate and not be detected in post-accident investigation. We will be happy to provide you with the technical reasons why defects may not be acknowledged by a railroad in an investigation. It is simply illogical and unsafe that substantial sums of Federal money be spent on purchasing and installing grade crossing protection equipment, but there are no equivalent requirements for maintenance of the installed equipment.

QUALIFIED EMPLOYEES TO PERFORM INITIAL TERMINAL TESTS AND INSPECTION

After promulgating the liberalized amendments to the power of brake rules in 1981, the Administrator, as well as the Associate Administrator for Safety, on numerous occasions stated that the new rules would be strictly enforced, and that FRA would use the full panoply of its legal remedies to achieve compliance. The new rules were intended to place great emphasis on the initial terminal tests and inspections by qualified employees. The Administrator stated that the maximum fine would be imposed for each violation. However, we feel we have been double-crossed both by FRA and the railroads. In the first place, the FRA has not required strict compliance with the regulations. Trains regularly leave terminals with little or no inspections, many contain defective cars, and in very few instances have the railroads been fined for their wholesale daily violations. Secondly, the railroads have used the new regulations as a basis for furloughing or reassigning qualified carmen, and requiring initial terminal tests and intermediate tests to be performed by train crews. The train crews, generally, have not been given adequate training nor have

they been instructed on the full responsibilities and demands of the Federal laws, such as under the freight car safety standards or the hazardous materials requirements. Carmen are recognized as being qualified to perform the tests and inspections, and they have been given rigorous training by the carriers, before being permitted to perform tests and inspections. The effect of the FRA's shutting its eyes to obvious violations and the carriers use of unqualified and untrained employees to perform all the tests and inspections that are required by Federal law, have resulted in very dangerous train operations. It is obvious from anyone knowledgeable about this issue that the quality of the initial terminal tests and inspections and the intermediate inspections have significantly deteriorated, rather than improved as contemplated by the rule changes. Where no carmen are present, there are literally no inspections for hazardous materials violations or freight car standards violations. We have found that the equipment, overall, is in poor condition. It is beginning to show up in the statistical data, by equipment defects causing more and more injuries and deaths. The absence of proper initial terminal inspections present further hazards to cities and towns through which these improperly inspected trains pass.

Therefore, we are proposing that only qualified personnel be permitted to perform the initial terminal tests and inspections, as well as the intermediate inspections, which will also make them available to perform the freight cars and hazardous materials inspections.

TRAINING AND WORK STANDARDS FOR TRAIN DISPATCHERS

Since last year there have been several catastrophic addidents caused in part by the inadequate training of dispatchers. At times the pace and the tension resulting from the workload of a train dispatcher equals that of an air traffic controller. In addition the equipment used by the dispatchers is becoming more sophisticated. However, the railroads are doing very little to teach the employees how to properly use the equipment, and newly hired dispatchers in particular are poorly trained. As you know last year the House unanimously passed an amendment which required the Secretary to conduct and complete an inquiry into whether training standards are needed for dispatching trains. The Secretary has done nothing to implement the intent of the House. Congress should not allow another year to go by without dispatchers being properly trained. Waiting another year for the Secretary to study the issue would certainly not be in the best interests of safety.

STANDING

We continue to be outraged at the way the FRA is administering the safety laws under its System Safety Plan. As we have pointed out in the past hearings, even where defects are discovered by the FRA inspectors, these would not be subject to citations and penalties as required by all the federal railroad safety laws. Rather, the FRA permits the defect to exist until such time as a railroad corrects it. Only if the defect is not corrected within a time set by the inspector will the FRA consider issuing a citation. Common sense dictates that the carriers no longer have any incentive to comply with the regulations. They simply can wait until a FRA inspector happens to discover a defect, and then make necessary repairs. Moreover, the safety inspectors are spread so thin throughout the country it is virtually impossible for them to follow-up on defects for many weeks. With respect to defects found on cars and locomotives there are few, if any, follow-ups.

The results of FRA's enforcement activity last year under this so called System Safety Plan demonstrates the effect of that policy. There were 286,771 defects discovered by FRA's inspectors which were forwarded to Washington for enforcement. However, only in approximately 13,000 cases did FRA seek to impose a fine, which covers less than 4% of the defects discovered.

There are numerous situations which demand scrutiny of FRA's enforcement activities. I wili mention a few so that you will better understand our frustrations. In many cases the violations have resulted in injuries and deaths.

(1) On trains without cabooses some railroads utilize a battery operated telemetry device for measuring brake pipe pressure. The device also has a light attached for purposes of satisfying the requirements of the warning lighted marker on the rear of trains. The batteries used by the railroads rarely stay charged and thereby fail to keep the lights in working condition during most trips. The United Transportation Union filed over 3,500 complaints in 1984 alone, and FRA has done nothing to require the railroads to comply, much less impose fines for the many violations.

(2) Sleeping quarters maintained in the yards around the country still do not provide a safe environment free from interruptions caused by noise under the control of a railroad. A notable example is at the Carlin, Nevada sleeping quarters. The

FRA allowed the railroad to construct a new dorm within a few hundred feet of where hazardous materials cars are switched. This specifically violates the requirements that any new quarters must be constructed at least one half mile away from switching. In addition, the employees are constantly interrupted by noise. There are three crossings in the immediate vicinity of the dorm and at each crossing the locomotive engineer must sound a horn and bells. This happens about 18 times per day. Everyone knows the loudness of a train horn and bells. However, an FRA inspector in sworn testimony stated that the noise at Carlin did not violate the regulations. This shows how ridiculous the standards are—locomotive horns and bells do not violate the regulations, but they certainly interrupt the rest of those trying to sleep at Carlin, Nevada.

A related aspect to FRA's non enforcement policies is that whenever the rail workers attempt to have the laws enforced, the FRA states to the Court that we are mere bystanders and have no right to seek the Court's assistance. Even though we think that rail workers have standing in such cases, and Courts have so held, it is a tactic used by FRA in every case in recent years which has cost thousands of dollars to litigate. The legal scoreboard since the FRA began filing motions to dismiss on the ground of lack of standing is two decisions in favor of the good guys and two for the government. We are lodging all of the decisions as part of the hearing record. To date the only U.S. Court of Appeals to rule on this issue is the 11th Circuit, which decision held that plaintiff union had standing. The purpose of the proposed amendment is to put an end to the thousands of dollars wasted in litigating this issue in every case, and to resolve disputes on the merits as they should be. Of course, we understand why the FRA is afraid to have cases decided on the merits.

Safety is too important to us and the public to allow FRA to disregard the laws of Congress and we will continue to seek compliance. Also, I should point out that we resent the characterization by FRA of being called "bystanders" when it is the rail workers who are killed and injured by the violations. If the rail worker does not have standing to assure that the rail safety laws of Congress are being complied with, no one does. Of course, that is what the FRA and the railroads hope will be the case. If our complaints are valid, then we should be allowed standing to correct the problem. If we are wrong on the merits, then a Court will so rule. Under the present situation there is no semblance of accountability of the FRA to the public. It is not the function of Congress to deal with individual cases where FRA doesn't comply with the various requirements of the safety laws. Therefore, we urge your favorable consideration of specifically granting standing to the rail workers.

I am confident that if standing were allowed by statute the results would be a safer railroad system in this country. I urge you to give us the opportunity to demonstrate this to you. There is nothing to lose and everything to gain by such a law. If we are wrong or abuse the right you could repeal the amendment. If you don't enact the standing amendment, Congress unwittingly is placed in a position of condoning the railroads violations, and FRA's inaction, as well as leaving the public without protection.

HARASSMENT

In 1980 Congress enacted an amendment to the Federal Railroad Safety Act which had the intent of prohibiting harassment of rail workers by the carriers. Unfortunately, the amendment has been ineffective for several reasons. First of all, the harassed employee can only pursue his or her claim under the Railway Labor Act. Since the passage of that amendment, we are unaware of any case that has been concluded through that process. It simply takes too long to resolve such a case under the Railway Labor Act procedures. More importantly, in most cases the carrier does not fire or suspend the individual; rather he or she is harassed continuously on the job. The only remedy under the provisions of the amendment is lost wages where the employee is fired or suspended. Unless the employee in the appropriate case can recover punitive damages, the legislation will continue to be of little help. One noteworthy example of harassment should be brought to your attention. On the Santa Fe Railroad a former FRA safety inspector returned to work for the railroad. He began noticing obvious safety problems, and reported them to the FRA. The Santa Fe learned of these complaints and subsequently fired the former inspector. The inspector has been without work now for several years. The Act was designed to prevent such acts by a railroad but the railroads recognize that the amendment has little protection for the employees.

We have no alternative but to seek your assistance in putting an end to all of the harassment tactics that continue to persist. Therefore, we are proposing a change in

the law to allow punitive damages in the appropriate cases, and to permit an employee (not a union) the option to file a suit in Court for recovery.

DISCLOSURE OF EMPLOYEE'S NAME WHO SUBMITS SAFETY COMPLAINTS

Closely connected with the harassment issue is the fact that FRA safety inspectors reveal to the carrier officials the names of employees who submit complaints of safety violations to the FRA. This targets the particular employee for many types of harassment by the carrier. This is just another example where the FRA is playing in the hands of the railroads. The FRA's excuse for disclosing the names is that the carrier could not be sued in Court for the violation without assistance from the complaining witness. The obvious answer to that is to prohibit disclosure of the names until a lawsuit is actually filed by FRA for enforcement. You can count on one hand the number of times that FRA has sued a railroad to recover a fine. During the claims collection process, disclosure of the name should always be prohibited. The railroad should only be provided the substance of the alleged violation during these settlement negotiations.

REPORTING CAUSES OF ACCIDENTS

One other problem that needs your assistance relates to the reporting under the Accidents Reports Act. As you know the railroads alone make the determination of the cause of every accident. We have serious reservations concerning the accuracy of the figures presented to FRA. You must keep in mind that these statistics are the ones relied upon by FRA, Congress and the public in making decisions on railroad safety. They are the figures quoted to you by every witness discussing rail safety. The point is that there must be more reliability in these statistics. One major flaw is that rail workers who are involved in every accident have no input in determining the causes of accidents. The railroads attribute human error as a major cause of accidents nationwide (over 25% last year). At least in such cases where a railroad assigns human error as a cause of an accident, the said employee (or collective bargaining representative) should be permitted to state on the form mailed to FRA what he or she determines to be the cause of an accident. Where the cause of the accident is disputed, the FRA should investigate the records and make an independent determination of causation. This would provide some integrity to be built into the accident reporting law.

In conclusion, we urge your adoption of the suggested amendments which will improve safety.

Senator PACKWOOD. Next we will take Mr. William Dempsey, President of the Association of American Railroads. He will be accompanied by Mr. William Harris and Mr. A. William Johnston.

Good morning.

Please go right ahead. Your entire statement will be in the record.

STATEMENT OF WILIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS, ACCOMPANIED BY A. WILLIAM JOHNSTON, VICE PRESIDENT OF OPERATIONS AND MAINTENANCE.

Mr. DEMPSEY. Thank you very much.

Dr. Harris unfortunately was not able to be with us, but Mr. Johnston is.

Senator PACKWOOD. All right.

Mr. DEMPSEY. I can be very brief, Mr. Chairman, because most of these issues were reviewed last year and the position of the railroads was stated at that time rather comprehensively. So I will simply touch upon some of the issues in a pretty summary way and then will try to answer any questions that you might have.

I would adopt just about everything that Mr. Riley said for the railroads. The situation is quite good. It has steadily improved. I

will not go into all of the figures, or even many of them, in light of what Mr. Mann had to say because they are all in the record.

The fact of the matter is since 1978 right thrugh 1984, every category, every statistical category that you want to look at has shown dramatic improvement. We, of course, are more concerned, as are the unions, about employee fatalities and injuries than we are about damage to a boxcar. But if you take those categories, for example, total railroad related fatalities decreased 35 percent from 1978 to 1983, and railroad employee fatalities decreased 47 percent in that period of time. There was a 52 percent decrease in reported injuries, and on it goes.

Senator PACKWOOD. So you are saying that both incidents and accidents have shown an improvement.

Mr. DEMPSEY. When you are dealing with incidents, you are dealing with a motley group of situations. Most of the injuries and fatalities associated with injuries are grade crossing situations and trespassers. But, yes, that essentially is what I am saying.

There are two exceptions.

There was a very minor upturn in employee injuries in 1984, and there was an upturn in fatalities at grade crossing accidents, even though the number of grade crossing accidents went down. That has reference to the concern that Mr. Riley expressed about for that one year. Apparently an increase in severity at the grade crossing accidents occurred, and we, too, are concerned about that.

But, by and large, the picture has been very good.

It has been due to a number of reasons The unions and the employees can and should take credit for much of the improvement. But one major cause certainly is the one Mr. Riley points to, and that is the increasing cash flow in the industry that has been due in large measure to the Staggers Act. That has permitted the industry to make massive investments in plant and equipment. There just is not any question that, when we had the whole system put together with bandaids, it was not a very safe system to operate.

I should say this, I think, in view of Mr. Riley's urging upon the industry increased expenditures for research and tests, we agree with him. We have not been able to have adequate expenditures in this area in the past because of the anemic financial condition of the industry. But now we have a new 5 year program for major increases in research and tests, 33 percent, for example, this year, in real dollar terms. Much of that is going to the Transportation Test Center at Pueblo which, as you know, the industry now is managing. It is a very, very successful program.

Most of our research, of course, has a safety component to it.

As to the labor issues, let me simply touch upon some of them.

We oppose all of the proposals. As to standing, Mr. Riley covered that matter fully, and I need say no more.

As to punitive damages, the point has been made already, and I would simply repeat it, that there is no provision similar to the one that the unions are seeking relating to any other industry in the United States. The provision that we now have is patterned after OSHA. We think it is ample to take care of whatever problem there is. I have not had the opportunity to read Mr. Snyder's testimony at this hearing, but at the House hearing I did, and there

was only one example given, one case given, and that was a case in which the employee was discharged, and accordingly there was no occasion for punitive damages.

As to the questions of air brake tests and dispatcher training and qualifications, these have been, in the past, typical collective bargaining issues—economic issues, rather than safety issues, although, of course, they can have a safety component to them, given the proper facts and circumstances.

I suggest, once again, that this is a matter that the administrator ought to look at and has looked at, and the employees ought to make their case to him. It is a typical administrative agency kind of case. If he has not abused his discretion, and I suggest that he has not on the basis of what evidence can be adduced, then it seems to me that that ought to do it.

The transfer of the safety functions to OSHA Mr. Riley addressed, and we would adopt what he had to say.

The proposals—these are new—with respect to confidentiality of the identity of the people reporting safety violations and the question of the employees having the right to assert whatever it might be that they think the cause of an accident was, simply do not seem to me to rise to the level of the stuff of Federal legislation.

I personally have no objection whatever to holding the names of the informants confidential, until such point as there is litigation, in which case we would have the right to normal discovery. But my understanding is that that is the policy of FRA, and if that is the case, Mr. Riley, I assume, would be glad to enforce that policy. If it is not, then I should think that the unions ought to take it up with him and perhaps the committee might want to take it up with him.

As I say, I have no objection to it as a matter of policy. It just does not look to me like something that you need a Federal statute for. Nor does the question of the recording of the employes 'views on the causes of accidents.

At the present time, in any case in which there is a significant accident and in which, therefore, discipline is an issue, there is a hearing and there is a transcript of the hearing. That transcript, it is my understanding, does go to FRA. So, if they want to look at it and see what the employee had to say, they can do it.

Beyond that, it seems to me the union representatives can simply tell the employees that if they would like to write FRA on this particular case and tell them what they think happened, go ahead and do it.

That would be my position on that.

I think that concludes what I have to say, Mr. Chairman.

Senator PACKWOOD. Tell me a little more about the harassment situation involving the Santa Fe employee, as far as you know.

Mr. DEMPSEY. Well, my understanding of that situation is I don't know a great deal about it, and mainly I am relying upon what Mr. Snyder said, which is that he was discharged and his claim was that he was discharged because he had made a report with respect to some safety violation.

I am told by the Santa Fe, or through my office by the Santa Fe, that the employee subsequently decided to take retirement instead of continuing to seek reinstatement and that, therefore, the claim

that is before the adjustment board is a claim, in effect, for lost pay during whatever period of time he was out before he retired.

That claim has not yet been resolved, so far as I am aware. It is there, though. The law, as it exists, is entirely adequate to deal with it because it is a discharge case and not a harassment case.

Senator PACKWOOD. Do you know any way better to hasten the procedures for pursuing harassment complaints under the act?

Mr. DEMPSEY. Well, if it is a discharge case, then it should be given priority, and the board would normally do that—not a discharge case, if it is a reinstatement case—because it is in everybody's interest to get those cases resolved as promptly as possible, for obvious reasons.

This case is unusual in that respect in that it is a discharge case without involving reinstatement claims. I assume that is one reason that it has been kind of put to the side.

But, in the normal run of cases in which it is asserted that an employee has been discharged because of reporting safety violations, those cases would be given priority.

I see nothing wrong with an agreement, again, because, after all, it is management and the unions out there in Chicago that establish the priorities. I don't see anything wrong with the management and union sitting down and working that out.

[The following information was subsequently received for the record:]

ASSOCIATION OF AMERICAN RAILROADS,
May 7, 1985.

Hon. BOB PACKWOOD,
Chairman, Surface Transportation Subcommittee of the Senate Commerce, Science, and Transportation Committee, Washington, DC.

DEAR MR. CHAIRMAN: I am writing with respect to your inquiry as to how the National Railroad Adjustment Board handles cases involving discharge and claims for reinstatement, including claims that are based on harassment allegations.

I have conferred with Mr. W. F. Euker, Chairman of the Railroad Members of the NRAB, and he confirms that the practice on all four divisions of the NRAB is to give such cases priority consideration. He provided me, by way of illustration, a resolution of the First Division of the NRAB that formally adopted this policy.

As you will recall, the case of the Santa Fe employee cited by Mr. Snyder involved a person who had, after discharge, taken retirement. Accordingly, there was no question of reinstatement or of continued deprivation of income. I may add that I understand now that this case is not before the NRAB, but rather before a Public Law Board. The calendar of such a board is, of course, worked out by agreement between labor and management representatives.

Sincerely,

WILLIAM H. DEMPSEY,
President.

Senator PACKWOOD. OK. I have no further questions, Mr. Dempsey.

Thank you.

Mr. DEMPSEY. Thank you, Mr. Chairman.

Senator PACKWOOD. Thank you for coming.

[The statement follows:]

STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

My name is William H. Dempsey and I am President and Chief Executive Officer of the AAR. Appearing here with me today are William J. Harris, Vice President of Research and Test, and A. William Johnston, Vice President of Operations and Maintenance.

The Association of American Railroads welcomes the opportunity to comment here today on the reauthorization of appropriations to carry out the purpose of the Federal Railroad Safety Act.

The railroads are proud of their safety record, and with that pride goes a commitment to constantly improve and make the industry's enviable safety record even better. Since we do not live or operate in a totally risk-free environment, that commitment compels consideration of safety factors as an inherent element in virtually every facet of rail operations, rail equipment and plant design, and railway construction and maintenance. Importantly, the success of that commitment is reflected in a dramatic improvement in rail safety as demonstrated by the casualty and train accident statistics over the last several years.

I have attached to my statement an appendix which contains a complete breakdown of rail safety statistics for recent years and an accompanying analysis. These data, which have been normalized to account for the varying levels of ton miles and employee hours worked, show a continuing improvement in rail safety.

Railroad employee fatalities in 1984 were down 9 percent from the 1983 figure.

Train accidents in 1984 decreased 13 percent from the 1983 figure.

Railroads have always been the safest mode of surface transportation for the carriage of hazardous materials and there has been a significant decrease in hazardous materials incidents.

Releases of hazardous materials in train accidents decreased over 40 percent from 1978 to 1983.

There were no fatalities resulting from rail transportation of hazardous materials in 1981, 1982, 1983 or 1984.

Despite the dramatic decline in injuries described previously, the industry is devoting significant resources to the reduction of these injuries. Over the period 1975–1983 five causes of railroad employee injuries represented about 56 percent of the injuries. These causes were 1) stumbling, slipping and falling (26 percent); 2) use of tools (11 percent); 3) handling materials (9 percent); 4) handling ties (5 percent); and 5) striking or being struck by equipment or material (5 percent).

The crafts most frequently involved in accidents are trackmen (18 percent), road trainmen (16 percent), yardmen (19 percent) and carmen (8 percent).

Sprains and strains from overexertion are the predominant type of injury from all causes to all crafts—accounting for over 50 percent of the cases. Back strains and other back injuries account for about 25 percent of all injuries. Sprains of the leg or foot account for about 12 percent with other injuries from overexertion accounting for about 11 percent.

Programs of research are underway at the AAR and on individual railroads to identify means to reduce the level of physical stress in railroad jobs. The latest techniques in job analysis and biomechanics are being used to identify hazardous tasks and to evaluate the physical requirements and demands of the jobs. The tools, methods, postures and operating practices in use are also being evaluated. Two Class I railroads have already begun to apply these research techniques to identify and reduce hazards leading to injuries from physical stress.

Highway-rail grade crossing accidents and casualties continue to be of great concern not only to the railroad industry, but also to the highway traveler. Fortunately, over the past decade through the combined and coordinated efforts of the railroad industry, rail labor, the railroad supply industry, all levels of government and many other concerned groups and organizations, dramatic gains have been made in improving safety at grade crossings. Based on statistics available from the Federal Railroad Administration, and indexing that data to a calculation of exposure of trains and motor vehicles based on train miles and motor vehicle miles of travel, accidents involving motor vehicles at public grade crossings have been reduced approximately 49 percent between 1975 and 1984, and 8.3 percent between 1983 and 1984. Similarly, injuries resulting from such accidents have been reduced approximately 38 percent since 1975, and fatalities a dramatic 54 percent since 1974.

I must point out, though, the railroad industry is increasingly concerned about the severity of grade crossing accidents. As I mentioned, while exposure indexed accidents were down over 8 percent between 1983 and 1984, the injury rate from these accidents was down only 1.2 percent, and the fatality rate increased 1.5 percent. I am uncertain of the reason for this phenomenon, but I am concerned that it may involve an increased number of longer, heavier commercial trucks and multiple passenger motor vehicles. If I could, I would like to mention two examples: During 1984 in Montana, grade crossing accident injuries increased from 7 to 45. This increase includes a March accident involving a commercial truck in which 33 Amtrak passengers were injured. In Virginia, 1984 grade crossing accident injuries increased from 43 to 59. That increase includes an April accident involving a school bus in

which 26 bus passengers were injured. I believe it is extremely important as we see the increased use of longer and heavier trucks, and the increased number of school buses, that we make every reasonale effort to limit the potential danger of accidents involving these types of vehicles by directing and limiting them to the safest available routes, involving the fewest possible number of highway-railroad grade crossings.

The remarkable improvement in grade crossing safety since the early 1970's has been largely the result of the accomplishments made under the national grade crossing improvement program funded under Section 203 of the 1973 Highway Safety Act and administered by the Federal Highway Administration. The railroads strongly support and have taken an active role in this program. The railroad industry has cosponsored approximately 220 meetings between state, local and federal highway and railroad officials in order to expedite and effectively implement this important program. This safety effort has been one of cooperation between many disciplines. It is a well defined program with the specific goal of improving the physical safety at crossings.

The national highway-rail grade crossing safety improvement program has been proclaimed by many to be the most effective highway safety improvement program on record. We are proud to be an integral part of it.

In addition, the public program involving education, enforcement, and engineering support conducted through "Operation Lifesaver" is supplementary to and enhances the benefits of the federally funded highway-rail grade crossing engineering improvement program. Funded largely by the railroads, this program takes advantage of one of the most effective tools available for reducing accidents—public education. Administered nationally by the National Safety Council, this program is now active in 44 states.

The dramatic improvement in railroad safety is primarily due to the railroads' ability to concentrate on programs which result in safer railroads from the ground up. The significant improvement in railroad physical plant since 1975 is reflected in the record expenditures for capital improvements and maintenance. Class I railroads alone committed almost $15 billion in 1984 for capital improvements and maintenance. This follows seven years of record spending for capital improvements. Some $4.1 billion of the 1984 funding went directly for maintenance of way and structures while $6.5 billion was spent for maintenance of equipment. New rail laid in 1983 totaled 538,597 tons, bringing the total for the five year period—1979-1983—to 3.8 million tons. In addition, 22.1 million crossties were installed in 1983. Over the five year period ending in 1983, more than 122 million ties have been laid—the equivalent of more than 42,000 miles of track.

Improvements in safety have also resulted from increased spending by individual railroads on safety and training programs for employees, a step-up in railroad safety research programs and increased cooperation among railroads, shippers, rail unions and the federal government.

In the prior hearings on rail safety, I have presented detailed descriptions of the on-going safety programs in the railroad industry. These programs, including Track-Train Dynamics, joint FRA-AAR wheel research, and the FRA-RPI-AAR Tank Car Safety Project are on-going activities which continue to make contributions to a safer railroad industry. Because these hearings are a continuation of the process begun last year I will not repeat the detailed discussion of these programs.

However, I would like to take this occasion to announce that the AAR has undertaken the development of a training program for the safe response to hazardous materials incidents. A training academy has been created at the Transportation Test Center in Pueblo, Colorado, complete with classrooms, laboratories and accident simulation sites. Programs will be offered beginning this June in basic training for response to railroad emergencies involving hazardous materials and in advanced training for special response techniques.

This is just one example of the safety related programs conducted at the Transportation Test Center. Indeed there is a strong relationship to rail safety in most of the work performed at the TTC. Current and future government sponsored safety research requires the availability of such a facility as a test site. TTC's current primary project, an independent test railroad on which heavy traffic and high tonnage are possible under carefully controlled conditions, is designed to permit the government and the railroads to learn more about the deterioration of track and equipment under heavy traffic conditions.

We at the AAR are encouraged that the Test Center has been permitted to continue its research into rail safety and related issues. At the time the AAR assumed responsibility for the operation of TTC, private funding represented less than 10 percent of the total funding. Currently, private expenditures represent almost 40

percent of the dollars spent at that facility. While the share of private participation will continue to grow, there continues to be a need for a public sector presence. Indeed, this is essential if the FRA is to have an available "laboratory" for the analysis of the equipment and facilities which it regulates.

We are pleased that Mr. John Riley, FRA Administrator, has indicated that an emphasis of his agency will be on investments in safety research, and that, as he said in Pueblo on February 24, 1984, "the Test Center will continue to be the primary competitor for our safety dollars."

PROPOSED LEGISLATION

During the Second Session of the 99th Congress the Railway Labor Executive Association submitted several specific legislative proposals to Congress. Some of those proposals were ultimately added to the then pending rail safety reauthorization bills. In 1984 we urged that those provisions not be adopted and we do so again.

Recently RELA has requested Congressional action with respect to additional matters. These subsequent requests are without merit.

GRADE CROSSING SIGNAL SAFETY SYSTEM

It is not necessary to direct the Secretary of Transportation to issue rules, regulations and standards governing the maintenance, inspection, and testing of highway grade crossing warning devices. Adoption of such regulations and standards would not improve grade crossing safety.

The Federal Railroad Administration conducted hearings in July 1984 and again in January of this year on the issue of grade crossing safety generally and on the specific maintenance and inspection practices of the nation's railroads. The facts presented at the hearings showed that of 4,634 grade crossing accidents in the first nine months of 1984, in only two cases were the active warning devices not functioning as intended. In other words, in only four-one hundreths of one percent of the cases did the device fail. Significantly, in those two cases the failure of the devices may not have been the direct cause of the accidents.

The record compiled by the FRA in 1984 and 1985 is similar to the data gathered and analyzed by the FRA in a previous rulemaking proceeding. In 1978 the FRA terminated that earlier proceeding, concluding that the issuance of regulations governing the inspection and maintenance of highway grade crossing warning devices could not be justified.

Grade crossing devices are effective, reliable and properly maintained by the railroads. Because of this reliability, the installation of additional devices (primarily under FHWA's Grade Crossing Safety Improvement Program), and efforts such as Operation Lifesaver, the most significant change in grade crossing safety since 1978 has been the dramatic decline in the number of accidents, injuries and fatalities involving motor vehicles at public grade crossings. Compared with 1978, there were 47 percent fewer accidents, 37 percent fewer injuries, and 42 percent fewer fatalities in 1984.

POWER BRAKE AND FREIGHT CAR INSPECTION STANDARDS

In 1984 the RLEA requested that Congress override provisions in collectively bargained agreements by specifically designating the particular railroad union members which are to perform certain air brake tests. The RLEA is not so much concerned with the qualification of employees performing the inspections and tests as it is with the craft to which the work is assigned.

Proponents of the proposed measure dealing with the qualifications of persons conducting tests are careful not to refer to the safety record of the air brake system. Over the past eight years there has been a very significant decline in the number of train accidents attributable to the air brake system and to brake rigging. In 1976 there were 275 such accidents. In 1984 there were only 66.

Operating personnel, including trainmen, have been inspecting air brakes since the automatic air brake system was introduced in the railroad industry in the Nineteenth Century. The federal regulations governing these tests and inspections were first adopted in 1958.

Trainmen are "qualified" because they are trained and have the necessary experience to participate in the tests and perform the inspections. At this point it would be helpful to describe the air brake tests and inspections which are performed. For purpose of clarity the power brake regulations can be described as including a test and an inspection. The test is to determine whether air is flowing the complete length of the train and that air leakage from the brake system is within permissible

limits. The participation of trainmen in this test is limited to observing an air pressure gauge at the rear of the train and notifying the engineer of the air pressure as shown on the gauge. The actual test is performed by the engineer in the locomotive. The amount of training necessary to prepare the trainmen to read a simple air pressure gauge is minimal.

Trainmen have always performed the inspection phase required by the regulation where carmen are not employed for that purpose. The inspection occurs after the brakes have been applied. This inspection is made to see whether the brake shoe and mechanical linkage tolerances are within permissible limits. The person making the inspection examines each car to see that the brake cylinder pistons are in proper braking position and that the brake shoes are applied to the wheels. The employee also inspects to determine that angle cocks are properly positioned, that brake rigging does not bind or foul and that brake equipment is properly secured.

This inspection process is not difficult to learn. The average person can perform the inspections with minimum experience. No employee is assigned the task of making an air brake inspection without having received instruction and training. In all instances the employee has received instructions on the nomenclature of the equipment to be inspected. In all cases the employee has observed the inspection being performed. All employees have accompanied a more senior employee qualified to make the inspection during an actual inspection. All employees receive information on how to perform the inspections. The instructional programs of the railroads utilize visual aids, including video discs, slides, charts or other written materials. Each employee, as a condition of employment, must attend training classes. Tests are administered and employee performance evaluations are made.

In addition to the instructions on performing the air brake inspections, trainmen are trained to inspect for defects under the Safety Appliance Act and the Freight Car Safety Standards. Additional training is given to instruct employees in the handling and placement of hazardous materials cars. The FRA regulations specifically require that each railroad designate persons qualified to inspect railroad freight cars. These persons must have demonstrated to the railroad the knowledge and ability to inspect cars for compliance with the standards and to make determinations regarding the safe movement of defective cars where conditions require such movements. Railroads are required to maintain written records of each person so designated and a written record of the basis for such designation (49 C.F.R. § 215.11).

There is no justification for the recommended provision. It is merely an attempt to establish a forum outside the collectively bargained agreements for airing disputes concerning craft assignments.

EMPLOYEE COMPLAINTS

In 1984 the RLEA proposed that Section 212 of the Federal Railroad Safety Act be amended to confer jurisdiction over all disputes arising under that section upon the federal district courts. If adopted such a provision would severely disrupt the long-standing system of referring "minor" disputes or grievances to the Adjustments Boards established pursuant to Section 3 of the Railway Labor Act. Disputes relating to discharge and discipline are traditionally minor disputes handled by Adjustment Boards. In enacting Section 212 in 1980, Congress wisely settled on the Railway Labor Act procedures as the exclusive means for enforcing this section. Requests to carry this issue beyond the Railway Labor Act procedures should be rejected.

Similarly, Congress should reject the proposal to expand Section 212 by authorizing the award of "punitive damages" to the employee that prevails before an Adjustment Board. Such provision would be totally unjust. Punitive damages have traditionally not been awarded by adjustment boards, and the system has functioned fairly and effectively for decades. There is no reason to treat claims of harassment differently than other claims, and no reason to believe that the remedy afforded us in the 1980 legislation has not been fully adequate.

In 1980 Congress expressed its intent to extend to railroad employees the same protection given in other industries under the Occupational Safety and Health Act of 1970. That has been accomplished. Under the Occupational Safety and Health Act the relief available to an employee which has been wrongfully discharged for so-called "whistle-blowing" activities is limited to rehiring or reinstatement and back pay (29 U.S.C.A. § 660(c)(2)). Similarly, the protection afforded motor carrier employees does not include "punitive damages" as part of the relief available under 49 U.S.C.A. § 2305(c)(2)(B).

STANDING OF RAIL EMPLOYEES AND COLLECTIVE BARGAINING REPRESENTATIVES TO COMPEL ACTION BY THE SECRETARY OF TRANSPORTATION

In 1980 FRSA was amended to permit an employee or an authorized collective bargaining representative to seek judicial review of the failure of the Secretary to issue an emergency order under section 203(a). Thus, the railroad employee is not without access to the courts when he is exposed to an unreasonable risk of physical injuries in the course of his employment because of the Secretary's failure to issue an emergency order.

The proposed amendment would create a new enforcement mechanism for alleged violations of the regulations with no guidelines or criteria to guide such enforcement. Presumably then, railway labor could bring an enforcement action even in cases in which the Secretary has affirmatively determined that no FRSA violation has occurred or that an enforcement action in the circumstances is unwarranted. No citizen has standing to challenge law enforcement policies of a public agency no matter how interested the citizen may be in those policies. A local district attorney may exercise his prosecutorial discretion and that discretion cannot be challenged by one who is neither prosecuted or threatened with prosecution. The same principle must apply to the enforcement policies of the Secretary in the enforcement of the railroad safety regulations. As a result of these shortcomings, a new enforcement "agency" would be created totally without any direction or oversight from the FRA.

The existence of multiple enforcement agencies opens the way for dozens of interpretations of railroad safety rules, regulations, and standards; perhaps one interpretation for each collective bargaining representative. It would be impossible to safely operate a railroad system on the basis of multiple enforcement policies and rules interpretations. Uniformity of regulation is at least as important to safety today as it was in 1970 when the FRSA was passed. For the sake of safety, the exclusive allocation of rail safety enforcement responsibilities to the Secretary of Transportation and the states should not be disturbed so as in any way to diminish that essential uniformity.

TRANSFER OF RAIL SAFETY FUNCTIONS TO THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

It has been suggested that jurisdiction over railroad safety matters should be transferred to the Occupational Safety and Health Administration. Those who propose such a switch have not correctly interpreted Congress' purpose in establishing OSHA. OSHA addresses the concerns of employee safety generally, setting standards that are applicable to many industries. OSHA was not established to address the unique concerns posed by a single industry. Congress recognized that industries posing particular risks should be regulated by agencies with the expertise to understand and properly regulate the unique risks posed by the industries. OSHA itself does not have the resources to devote to the particular hazards posed by the various transportation modes, the mining industry, utilities with nuclear reactors and others. It would be incogruous to take railroad matters out of the Transportation Department and put them in the Labor Department. This Committee and the FRA should retain jurisdiction over railroad safety issues.

TRAINING AND WORK STANDARDS FOR DISPATCHERS

There is no demonstrated need for the establishment of regulations governing the training of railroad train dispatchers. All too often in the past Congress has been requested to enact statutory solutions for "problems" which are nonexistent. These Congressional mandates unnecessarily divert the FRA's and the industry's limited resources from more productive programs.

Railroads currently have training programs for ensuring that employees are capable of performing the tasks of train dispatchers. A thorough understanding of the railroad's operating rules are required before a candidate is considered for the job of dispatcher. Candidates are given instructions and work with qualified dispatchers prior to becoming assigned. Candidates do not receive approval simply because they have completed the training program. An assessment must be made and qualified dispatchers with proven track records must determine that each candidate is qualified.

The FRA already has the statutory authority to establish employee qualification standards for safety purposes. It is not necessary for the Congress to second guess the agency on the basis of RLEA's request, and force them to conduct a formal investigation into the subject of dispatcher training.

IDENTIFICATION OF EMPLOYEES SUBMITTING COMPLAINTS

RLEA has requested that a citation for an alleged violation of a safety regulation based solely on a report made by an employee be administratively enforceable without disclosure of the employee's identity. Such an enforcement scheme would invite abuse and put the railroads in an unreasonable position in responding to citations issued by the FRA.

Under current practice the FRA initiates investigations by its field force based on complaints or advice received from railroad employees. Under such circumstances the railroads do not object to the non-disclosure of the employee identity.

In any event, this is a matter which can be handled as a matter of administrative policy and not an issue which deserves Congressional action.

REPORTING CAUSES OF ACCIDENTS

The RLEA has requested that Congress specifically provide that rail employees or their collective bargaining representatives be permitted to submit comments contradicting the railroad's report on the cause of individual accidents. In those cases where the railroad and the employee differ as to the cause of an accident the FRA would be required to investigate and make an independent determination of the cause of the accident.

Current law provides that any person who knowingly and willfully makes a false entry in any record or report or files a fake report shall be fined not more than $5,000 or imprisoned for not more than two years or both. If the RLEA is alleging that fake reports are being filed, adequate remedies exist.

RLEA's charge that too many accidents are being attributable to "human factors" should be assessed with a complete understanding of the reporting requirements. FRA requires that the primary cause and the contributing cause (if any) be identified in each accident report. One entire category of causes falls under the general heading of "Track, Roadbed and Structures." The second category covers "Mechanical and Electrical Failures." The third category covers "Train Operations." This first category contains the cause codes for failure to properly observe any number of rules or failure to perform a task properly. These are referred to as "human factors" causes. The railroad must answer for its track, its equipment and for the performance of its employees. There is no incentive for the railroad to identify a "human factor" cause code as the cause of an accident in lieu of track or equipment causes. Indeed, as noted above the railroads have an adequate incentive to file true and accurate reports.

RLEA's proposal would only add the potential for an increase in the amount of paper filed with the FRA and potentially divert FRA's investigative resources from more productive work.

APPENDIX—ANALYSIS OF SAFETY DATA

All railroads are required to report certain classes of accidents and employee casualties to the Federal Railroad Administration. The Research and Test Department of the AAR maintains continuing surveillance of these data and conducts analyses to monitor the trends and to identify and rank the causes of accidents, employee injuries, and fatalities.

The FRA categorizes accidents into four groups for reporting purposes: train accidents, train incidents, non-train incidents, and grade crossing accidents. Train incidents refer to occurrences in which there was relatively little financial loss but which resulted in death or injury. Non-train incidents are injuries or deaths not involving the movement of trains. An incident is classified as a train accident if it involves at least $4,900 in damages to railroad property, whether or not it involved any casualties.

While train accidents have resulted in substantial damage to track and equipment, these accidents were responsible for only a small portion of railroad injuries and fatalities. Figure 1 shows the percentage of fatalities and injuries by type of accident for 1978–1983. Grade crossing accidents accounted for the largest percentage of railroad-related fatalities, about 60 percent. Train incidents and non-train incidents accounted for 37 percent of all railroad fatalities, most of which involved trespassers. Only 1.6 percent of reported fatalities were related to train accidents, and only 1.4 percent of reported injuries occurred as a result of a train accident.

There has been a sharp downward trend in fatalities over the last five years, as shown in Table 1. From 1978 through 1983 railroad fatalities have decreased from 1,646 to 1,073, a 35 percent decline.

Figure 2 presents the 1978–1983 trends in train accidents at various damage thresholds. The FRA reporting threshold is adjusted biannually to remove the effects of inflation. In 1978 the threshold was $2,300; in 1979 and 1980 it was $2,900; in 1981 and 1982 it was $3,700. In 1983 the threshold was increased to $4,500. The "adjusted" trend line shown in Figure 2 is for yearly adjustments. As can be seen in Figure 2, the number of train accidents at each threshold has declined since 1978. Between 1978 and 1983, the reported number of train accidents decreased 60 percent. The number of accidents at the "adjusted" threshold and at thresholds of $10,000, $25,000, and $100,000 decreased 64, 60, 60, and 61 percent, respectively. Preliminary 1984 data show the downward trend in train accidents is continuing.

These curves also point out that over 40 percent of reported accidents have damages below $10,000; and major accidents, those in which damage to track and equipment was greater than $100,000, accounted for only 9.5 percent of reported train accidents over the last six years.

Figure 3 shows the 1978–1983 trends in mainline derailments, yard derailments, collisions, and other accident types normalized by gross ton miles. The mainline derailment rate decreased 63 percent since 1978, the yard derailment rate decreased 58 percent, the collision rate decreased 68 percent, and the rate for other accidents by 46 percent. In terms of the percentage distribution by accident type, mainline derailments accounted for almost 40 percent of all train accidents. Yard derailments accounted for 31 percent, collisions for 14 percent, and all other accidents for 15 percent.

Accident causes are categorized into four groups—Track, Equipment, Human Factors, and Miscellaneous. The 1978–1983 trend in each of these cause categories has declined dramatically for both mainline and yard derailments as shown in Figures 4 and 5. Between 1978 and 1983 the Track caused mainline derailment rate decreased 65 percent. The mainline derailment rates for Equipment, Human Factors and Miscellaneous causes decreased 68, 50, and 57 percent, respectively, over the past six years.

The yard derailment rate for Track and Equipment causes each decreased about 60 percent between 1978 and 1983. The yard derailment rate for Human Factors and Miscellaneous causes each decreased about 55 percent.

The major causes of Track, Equipment, and Human Factors each represent many cause categories. Tables 2 and 3 show the percent of accidents and reported damages associated with these cause categories for mainline and yard derailments. These two tables point out the diversity of causes associated with mainline and yard derailments.

EMPLOYEE CASUALTIES

Between 1978 and 1983 an average of about 57,500 casualties (fatalities, injuries and occupational illnesses) were reported annually. Over 85 percent of these casualties, almost 50,500 a year, involved on-duty railroad employees. Of these employee casualties, 0.2 percent were fatalities and 2.6 percent were occupational illnesses. Almost 43 percent of the reported casualties were minor injuries—that is, they resulted in no lost work days. (Figure 6).

Table 1.—RAILROAD FATALITIES BY TYPE OF PERSON

[1978–1982]

Type of person	1978	1979	1980	1981	1982	1983	Percent of total
Employees	131	102	108	72	84	70	7.1
Passengers	13	6	4	4	9	4	0.5
Nontrespassers	1,010	805	739	626	525	527	53.1
Trespassers	492	516	566	582	501	472	39.3
Total	1,646	1,429	1,417	1,284	1,119	1,073	100.0

RAILROAD FATALITIES BY TYPE OF ACCIDENT

[1978-1983]

Type of accident	1978	1979	1980	1981	1982	1983	Percent of total
Train accidents	61	23	29	13	14	19	2.0
Train incidents	457	453	496	496	444	432	34.9
Nontrain incidents	64	70	59	47	54	47	4.3
Grade crossings	1,064	883	833	728	607	575	58.9
Total	1,646	1,429	1,417	1,284	1,119	1,073	100.0

Table 2.—MAINLINE DERAILMENTS BY CAUSE CATEGORY 1978–83 AVERAGE

[Dollar amounts in thousands]

Cause category	Derailments	Percent	Damages	Percent
Track causes	1,279	47.2	$102.1	43.5
Track geometry	697	25.7	42.6	18.2
Rail and joint bar	373	13.8	42.4	18.1
Frogs and switches	115	4.2	5.2	2.2
Roadbed defects	84	3.1	9.7	4.1
Other track causes	10	0.4	2.2	0.9
Equipment causes	812	30.0	73.1	31.2
Truck components	201	7.4	13.5	5.8
Axles and journals	177	6.5	18.0	7.7
Wheels	159	5.9	20.2	8.6
Body	89	3.3	7.0	3.0
Coupler and draft gear	83	3.1	5.6	2.4
Brakes	77	2.8	6.2	2.6
Other equipment causes	26	1.0	2.6	1.1
Human factors	311	11.5	26.4	11.1
Miscellaneous H.F.	170	6.3	10.5	4.5
Speed	51	1.9	9.5	4.1
Use of switches	34	1.3	1.0	0.4
Use of brakes	31	1.1	2.9	1.2
Other rules	19	0.7	1.0	0.4
Signaling	5	0.2	1.3	0.5
Emp. physical condition	1	0.0	0.2	0.0
Miscellaneous	307	11.3	32.5	13.9
Total	2,709	100.0	$234.1	100.0

Table 3—YARD DERAILMENTS BY CAUSE CATEGORY 1978–83 AVERAGE

[Dollar amounts in thousands]

Cause category	Derailments	Percent	Damages	Percent
Track causes	1,204	56.5	$17.9	52.5
Track geometry	457	21.4	6.7	19.5
Frogs and switches	392	18.4	5.6	16.3
Rail and joint bar	303	14.2	4.7	13.9
Roadbed defects	46	2.2	0.8	2.3
Other track causes	6	0.3	0.2	0.6
Equipment causes	233	10.8	3.7	11.6
Wheels	73	3.4	1.3	3.7
Truck components	56	2.6	0.9	2.5
Body	25	1.1	0.5	1.4
Brakes	28	1.3	0.4	1.3
Coupler and draft gear	36	1.7	0.6	1.8
Other equipment causes	11	0.5	0.2	0.7
Axles and journals	4	0.2	0.1	0.2

Table 3—YARD DERAILMENTS BY CAUSE CATEGORY 1978–83 AVERAGE—Continued

[Dollar amounts in thousands]

Cause category	Derailments	Percent	Damages	Percent
Human factors	539	25.3	9.4	27.1
Miscellaneous H.F.	233	10.9	3.9	11.4
Use of switches	148	6.9	2.1	6.1
Other rules	64	3.0	1.0	2.8
Use of brakes	47	2.2	1.1	3.2
Speed	38	1.8	1.1	3.1
Signaling	8	0.4	0.1	0.4
Emp. physical condition	1	0.0	0.0	0.0
Miscellaneous	158	7.4	3.0	8.6
Total	2,134	100.0	34.0	100.0

The trends in employee casualties per million man hours are shown in Figure 7. The rates of employee fatalities, illnesses, and injuries have each declined since 1978. Employee fatalities per million man hour decreased 27 percent, lost time injuries decreased 31 percent, minor injuries decreased 34 percent, and occupational illnesses decreased 44 percent.

The majority of the lost-time injuries are not associated with train accidents as shown in Table 4. Therefore, research on employee safety must consider factors other than the causes of train accidents if they are to have a significant impact on employee injuries. Table 4 compares the significant causes of employee fatalities and lost-time injuries and points out that the leading causes of lost-time injuries are not the same as the leading causes of employee fatalities. Note that the first two causes listed, which account for over 50 percent of fatalities, account for only 8 percent of lost-time injuries.

Over the period 1975–1983 five causes of railroad employee injuries represented about 56 percent of the injuries. These causes were 1) stumbling, slipping, and falling (25.9 percent); 2) use of tools (10.6 percent); 3) handling materials (8.6 percent); 4) striking or being struck by equipment or material (5.6 percent); 5) handling ties (5.1 percent) (Figure 8). The remaining 44 percent of injuries were spread over 17 different causes.

The crafts most frequently involved in accidents were trackmen (18 percent), road trainmen (15.9 percent), yardmen (18.9 percent), and carmen (8.1 percent) (Figure 9).

Sprains and strains from over-exertion are the predominant type of injury from all causes to all crafts—accounting for over 50 percent of the cases. Back strains and other back injuries account for about 25 percent of all injuries. Sprains of the leg or foot account for about 12 percent, with other injuries from over-exertion accounting for 11 percent (Figure 10).

Table 4.—EMPLOYEE CASUALTY DATA SUMMARY 1978–1983 CAUSES OF FATALITIES AND LOST-TIME INJURIES

Cause	Fatalities			Injuries		
	Number	Percent	Rank	Number	Percent	Rank
Striking or being struck by equipment or material	134	25.55	1	10,824	5.60	5
Train accident collisions, derailment, and grade X-ing	132	25.20	2	4,445	2.30	12
Stumbling, slipping, and falling	51	9.64	3	50,060	25.90	1
All others	46	8.83	4	17,588	9.10	3
Motor vehicle accidents	28	5.34	5	3,195	1.65	15
Coupling/uncoupling locomotives/cars	26	4.99	6	7,731	4.00	8
Use of tools	25	4.76	7	20,488	10.60	2
Fire, electric shock	18	3.48	8	1,933	1.00	21
Assault	16	3.02	9	2,706	1.40	17
Flying or falling object	13	2.44	10	6,791	3.51	11
Getting on/off equipment	9	1.74	11	8,891	4.60	7
Operating handbrakes	5	0.93	12	3,251	1.68	14

Table 4.—EMPLOYEE CASUALTY DATA SUMMARY 1978–1983 CAUSES OF FATALITIES AND LOST-TIME INJURIES—Continued

Cause	Fatalities			Injuries		
	Number	Percent	Rank	Number	Percent	Rank
Unexpected movement	5	0.93	13	2,547	1.32	19
Caught between cars/locos	4	0.81	14	207	0.11	22
Defective equipment	4	0.81	15	2,571	1.33	18
Slack action	3	0.58	16	2,706	1.40	16
Handling materials	2	0.46	17	17,202	8.90	4
Window/door, etc.	1	0.23	18	3,866	2.00	13
Corrosive fumes	1	0.12	19	2,119	1.10	20
Handling ties	1	0.12	20	9,857	5.10	6
Operating switches	0	0.00	21	6,958	3.60	10
Object in eye	0	0.00	22	7,345	3.80	9
	524	100.00		193,280	100.00	

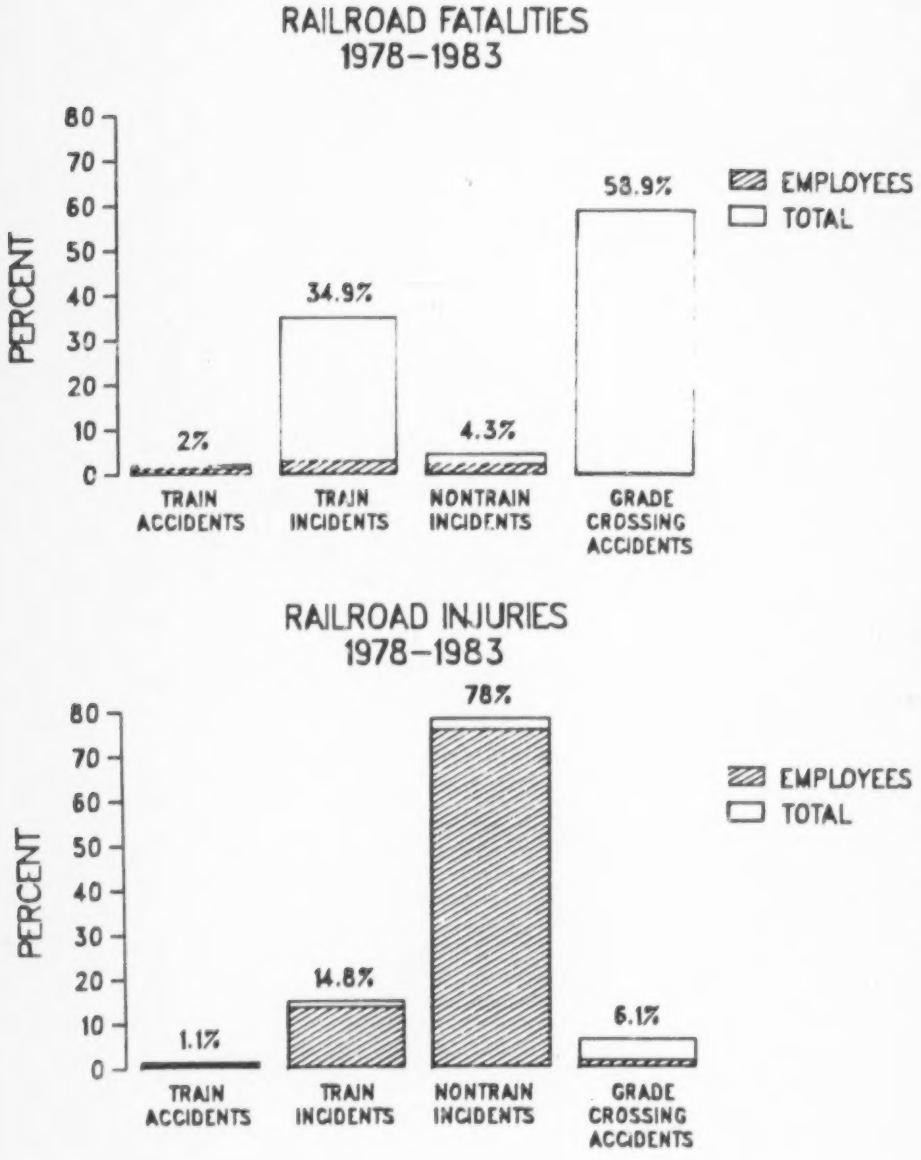
RAILROAD FATALITIES
1978–1983
PERCENT
80
70
60
50
40
30
20
10
0
2%
34.9%
4.3%
58.9%
EMPLOYEES
TOTAL
TRAIN ACCIDENTS
TRAIN INCIDENTS
NONTRAIN INCIDENTS
GRADE CROSSING ACCIDENTS
RAILROAD INJURIES
1978–1983
PERCENT
80
70
60
50
40
30
20
10
0
1.1%
14.8%
78%
6.1%
EMPLOYEES
TOTAL
TRAIN ACCIDENTS
TRAIN INCIDENTS
NONTRAIN INCIDENTS
GRADE CROSSING ACCIDENTS

FIGURE 1

TRAIN ACCIDENTS
1978–1983

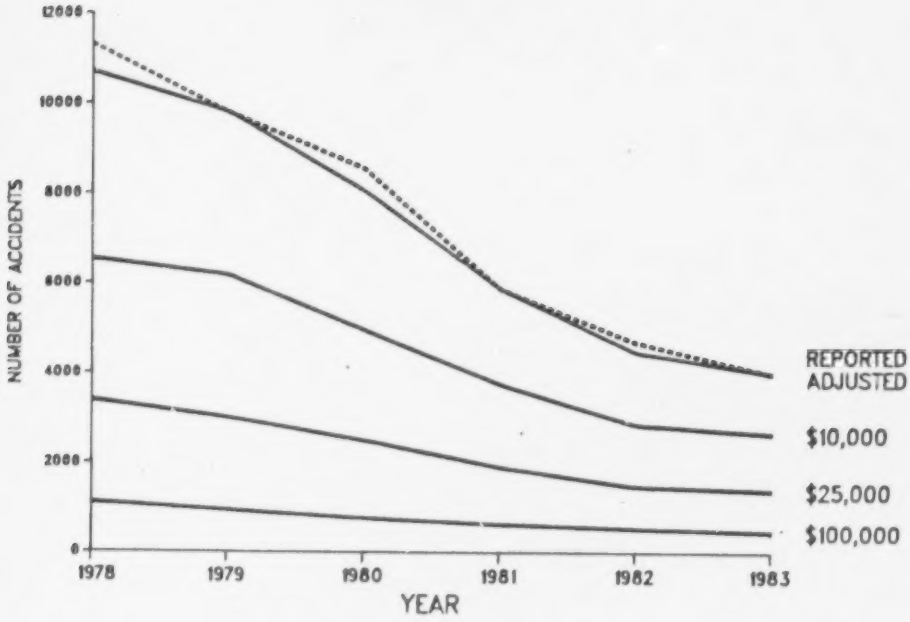

FIGURE 2

TRAIN ACCIDENTS
PER BILLION GROSS TON MILE
BY ACCIDENT TYPE
1978 – 1983

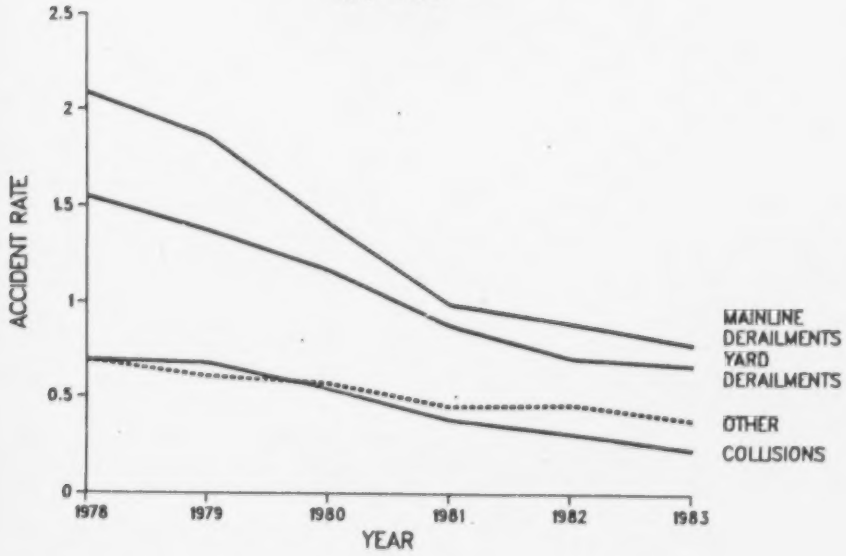

FIGURE 3

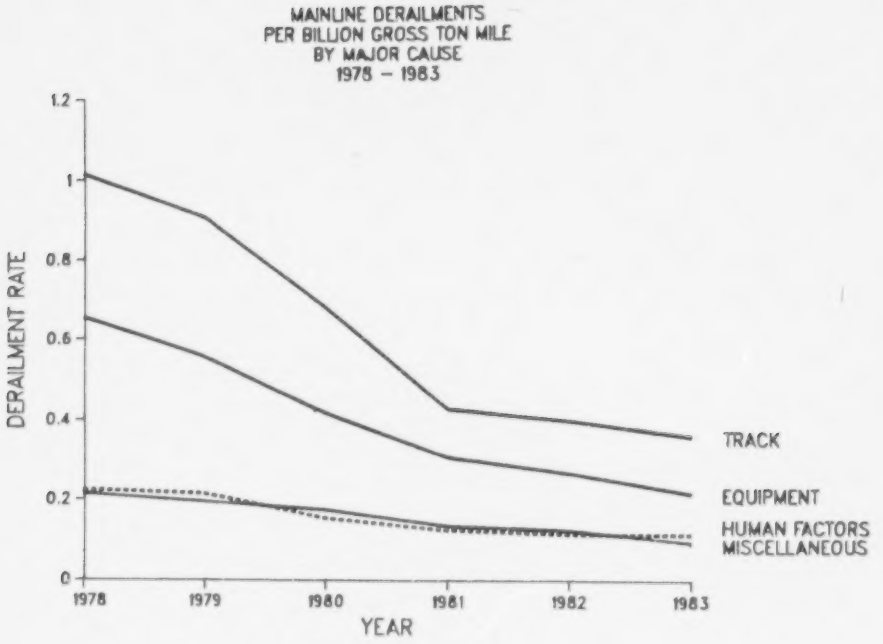

FIGURE 4

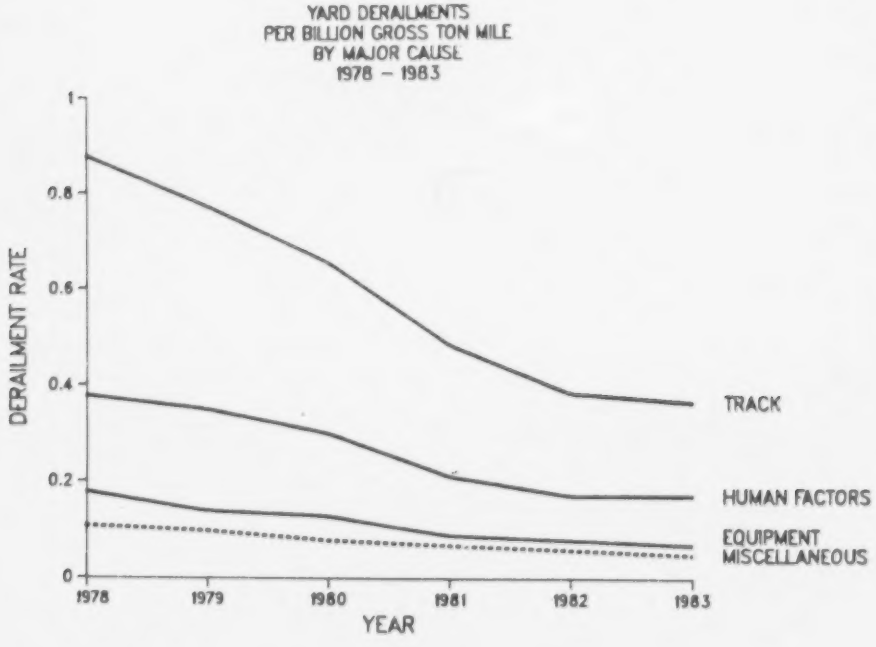

FIGURE 5

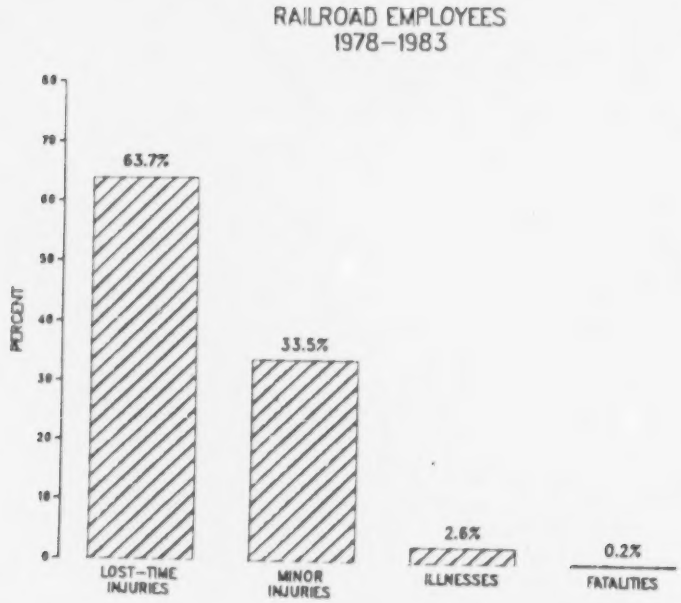

FIGURE 6

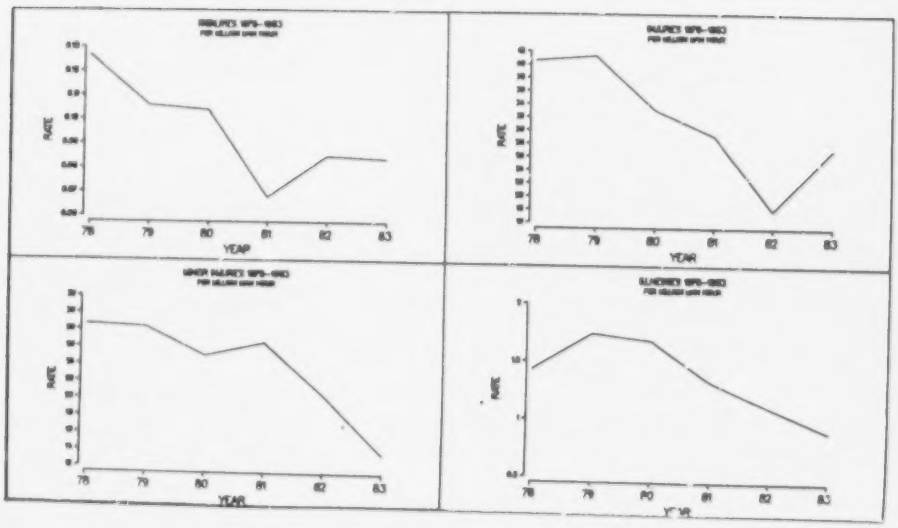

FIGURE 7

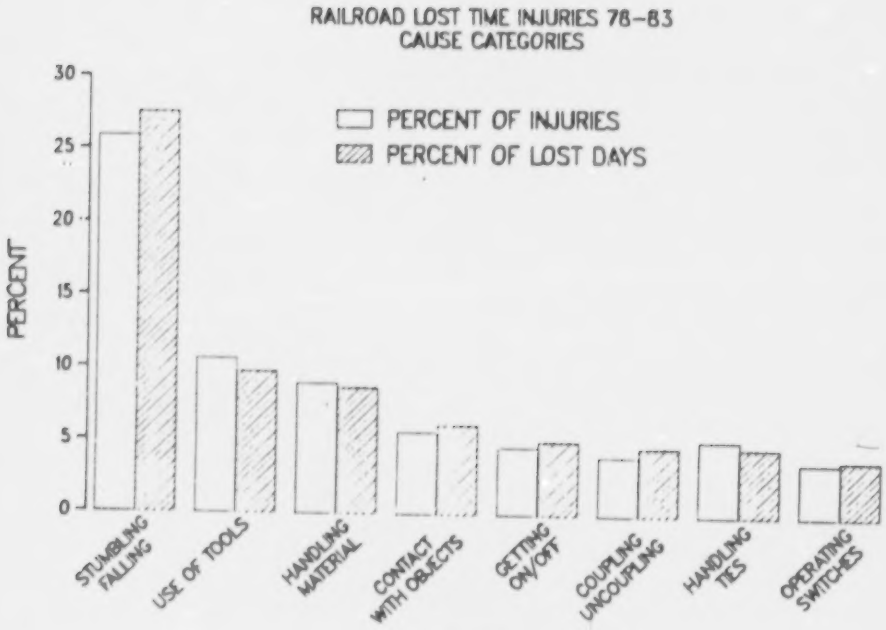

FIGURE 8

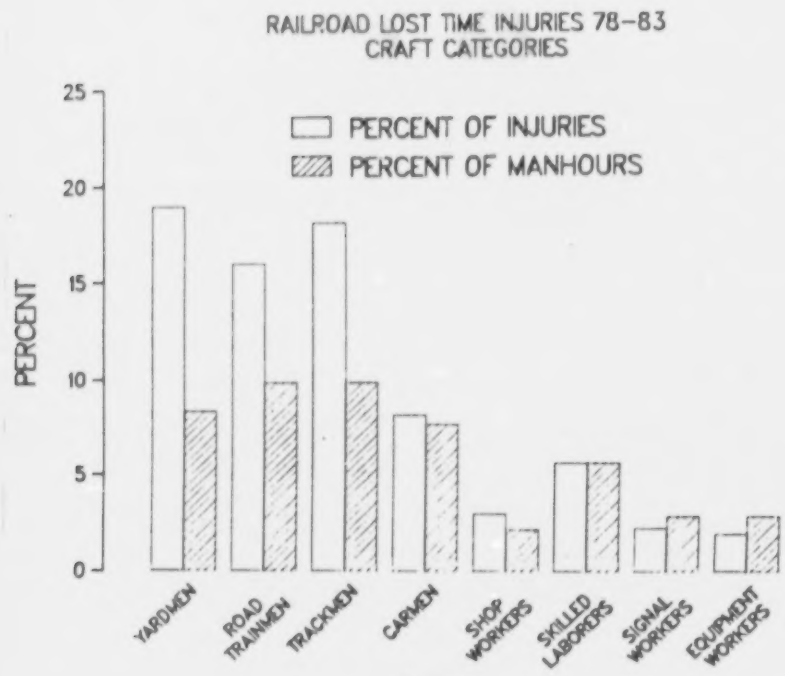

FIGURE 9

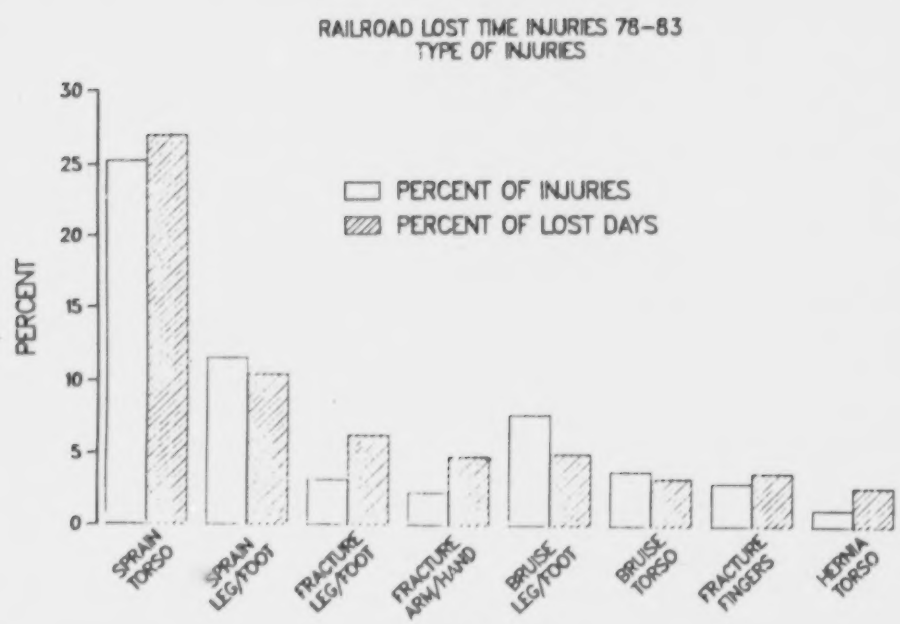

FIGURE 10

Senator PACKWOOD. We will conclude with a State panel today consisting of Mr. George Hardy, administrator of the Oregon Public Utility Commission, speaking on behalf of NARUC, and Mr. William Druhan, the program director for the American Association of State Highway and Transportation Officials.

Again, gentlemen, I have had a chance to see your statements, and they will be in the record in full. If you can abbreviate them, I would appreciate it.

Do you want to go first, Mr. Hardy?

STATEMENTS OF GEORGE HARDY, ADMINISTRATOR, OREGON PUBLIC UTILITY COMMISSION, ON BEHALF OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, ACCOMPANIED BY KAREN LEE HOCHSTEIN, DIRECTOR OF CONGRESSIONAL RELATIONS; AND ALAN R. SCOTT, CHIEF, RAIL AND MOTOR CARRIER LAW ENFORCEMENT, WASHINGTON STATE UTILITIES TRANSPORTATION COMMISSION

Mr. HARDY. Thank you, Mr. Chairman.

My name is George Hardy, and I am the administrator of the Rail Safety Division with the Public Utility Commissioner of Oregon.

Today I am testifying on behalf of the National Association of Regulatory Utility Commissioners, or NARUC. Accompanying me today is Alan Scott, chief of the Rail and Motor Carrier Law Enforcement, Wshington State Utilities Transportation Commission, and Karen Hochstein, NARUC director of Congressional Relations.

The members of the NARUC greatly appreciate your invitation to address the subcommittee on the reauthorization of the Federal Railroad Administration's railroad safety program at funding levels that will enable the program to achieve its safety objective.

Section 206 of the Federal Railroad Safety Act of 1970 provides that the States may become involved in the enforcement of Federal standards in order to improve our Nation's rail transportation safety. In order to achieve that essential public goal, the program relies on a vital Federal-State partnership.

An outstanding point is that under the 1970 act, States are preempted from enforcing Federal regulations, except as provided in the FRA-State Participation Program.

As administered by FRA, States which adopt Federal safety regulations are certified to enforce those regulations. The program provides for up to 50 percent in Federal funds to assist participating States in carrying out that mandate.

If a State chooses not to assume responsibility, the Federal Government automatically bears the burden and must pay 100 percent of the costs of the program.

As you can see, this funding mechanism provides an excellent incentive for Stae participation in this program, well above the level that the Federal Government could do alone with the same amount of money.

Currently, agencies in 32 States are certified under the program, evidencing their obvious commitment to assuring railroad safety.

Over the past 4 years, the number of State inspectors has increased: from 92 in 1982 to now 111.

FRA, with 325 inspectors, and the States with 111 inspectors, means that the States equal one-third, or 30 percent, of the Federal counterpart.

The effectiveness of the Federal-State partnership embodied in the rail safety program is well documented and represents a sound investment in a comprehensive safety plan. As a result of this Federal-State partnership, each year the Nation's rail system destroys fewer lives and less property.

You have heard all sorts of figures on current rail accident statistics, and I will not go into that. Basically our position is that those figures are valid.

It is not surprising tha the results of a survey we did this year indicates that the States have evidence of the same kind of accident trend. A sampling of State accident history between 1979 and 1982 revealed a 65 percent reduction in fully certified States versus a 42 percent accident reduction in nonparticipating States.

In addition to its obvious value in protecting public safety, there are further advantages to this program. It encourages the States to contribute their own funding and manpower to assist the Federal Government. Utilizing State resources to implement Federal safety standards reduces the cost to the Federal Government.

Further, the Federal Government gains the benefit of State expertise when enforcement responsibilities are carried out by officials at the local level.

With 300,000 miles of railways and 1.7 million freight cars, the nation cannot afford to curtail its rail safety program.

We respectfully request that the subcommittee reiterate its support for this important program by approving its reauthorization with funding at a level of $3.5 million for the Fiscal Year 1986 budget in order to continue at least partial Federal funding.

Curiously, at a time when the rail safety program is achieving the results which were envisioned, FRA is seeking its demise. FRA again has requested no funding for the State program.

We believe that such a move runs counter to the regulatory policy of encouraging State participatin in lieu of increased Federal involvement in local program implementation. Indeed, the FRA's desire to eliminate the rail safety program is baffling in view of the FRA's own testimony before the House last month regarding the exceptional improvements in railroad safety.

In conclusion, I would like to point out that the growing level of State participation and the corresponding decrease in the number of railroad accidents stand as the best evidence of the importance of the FRA's State Participation Program. These States have accepted Federal responsibility by participating in the Rail Safety Program while providing 50 percent of the costs.

The advantages of the Federal-State partnership in enforcing railroad safety regulations—the dollars saved in potential property damage and protecting lives—are adequate justification for continued authorization of the program at the full funding level.

However, this program offers an additional beneficial feature in that the financial burden is shared by both the Federal and State governments. In this time of necessary budget restraint, such arrangement is practical and efficient.

The alternative suggested by the Reagan administration is to eliminate all funding, which places at risk the continuation of this essential safety program.

Accordingly, we seek your help in preserving the State Participation Program.

I would like to point out and reference the written testimony concerning certain elements of Mr. Riley's comments. It has been mentioned that this program, if it were eliminated, would mean that all of the participating States would have to contribute an additional $109,000 per State. We would like to remind you that the States are already contributing $109,000 on an average, so, by simple arithmetic, this would be $218,000 per State.

Also, there have been comments that very few States would withdraw from the program. Last year, the National Association of Regulatory Utility Commissioners and I in particular, as chairman of the Staff Subcommittee on Rail Safety, conducted a survey of all participating States. It turned out that almost a third of the States would drop out for sure, with a full third of the inspectors being lost. The remainder of the States were very doubtful whether they could go to their legislatures for continued funding. So there was a potential risk of 75 percent of the State inspectors being lost, should Federal funding be discontinued.

We think this is an important point.

[The statement follows:]

STATEMENT OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

INTRODUCTION

Mr. Chairman and Distinguished Members of the Subcommittee: My name is George Hardy and I am a Rail Safety Division Administrator with the Public Utility Commissioner of Oregon. I am testifying today on behalf of the National Association of Regulatory Utility Commissioners, commonly referred to as the "NARUC". Accompanying me today are Paul Rodgers, NARUC General Counsel and Administrative Director and Karen Hochstein, NARUC Director of Congressional Relations.

The NARUC is a quasi-governmental nonprofit organization founded in 1889. Within our membership are the governmental agencies of the fifty States and the District of Columbia, Puerto Rico and the Virgin Islands engaged in the regulation of utilities and carriers. Our chief objective is to serve the public interest by seeking to improve the quality and effectiveness of government regulation.

The members of the NARUC greatly appreciate your invitation to address the Subcommittee on the reauthorization of the Federal Railroad Administration's (FRA's) railroad safety program. The NARUC is particularly interested in the future of this program as our members include those State regulatory entities which are current or potential participants in the rail safety grants-in-aid program. Therefore, we strongly support the reauthorization of this program as well as the appropriation of sufficient funding to ensure its continued viability.

FUNDING FOR THE RAIL SAFETY GRANTS-IN-AID PROGRAM

As authorized by section 206 of the Federal Railroad Safety Act of 1970 [1] the State safety program provides that the States voluntarily implement and enforce Federal standards in order to improve our Nation's transportation safety. In order to achieve that essential public goal, the program relies upon a vital Federal/State partnership.

The rail safety program is similar to the highly successful natural gas pipeline safety [2] grants-in-aid program and the newly created commercial motor vehicle safety [3] grants-in-aid program. As administered by the FRA, States which adopt Federal safety regulations are certified to enforce those regulations. The program provides for up to fifty percent in Federal funds to assist participating States in carrying out that mandate. If a State agency chooses not to assume responsibility, the Federal government automatically bears the burden and must pay 100 percent of the costs of the program. The program requires the FRA to annually approve the States' activities to ensure compliance with Federal safety standards.

Currently, agencies in 32 States are certified under the program evidencing their obvious commitment to assuring railroad safety. [4] The number of inspectors has also increased: from 92 in 1982, to 100 in 1983, and to 111 in 1984. Today, the number of State inspectors equals one-third of the Federal rail safety force.

The Federal funds allocated to the program have been put to effective use, permitting many States to establish and/or to perfect State-level safety activities. It is largely through the efforts of the State inspectors that railroad accidents have been reduced.

The effectiveness of the rail safety program is well documented and represents a sound investment in a comprehensive safety plan. According to a General Accounting Office (GAO) report, State participation in "rail safety enforcement has had a positive effect by supplementing [the] FRA's inspection force." [5] As a result of this Federal/State partnership, each year the Nation's rail system destroys fewer lives and causes less property damage.

The National Transportation Safety Board (NTSB) cited the benefits of State participation in its "Safety Evaluation of the Federal Railroad Administration's Hazardous Materials and Track Safety Programs" adopted March 8, 1979. The report criticized FRA for not implementing a stronger State participation program, but had the following to say about the benefits the States provide to the Federal effort:

"The States represent a resource of inspectors which can supplement the FRA force of inspectors and, at the same time, allow the States to participate in a phase of transportation safety in which most States and the public are interested . . . In

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[1] 45 U.S.C., § 435.
[2] 49 U.S.C., § 1674.
[3] 49 U.S.C., § 2302.
[4] For a list of the participating States, see Appendix.
[5] Report by the Comptroller General of the United States, "The Federal Approach to Rail Safety Inspection and Enforcement: Time for Change" (April 19, 1982), p. 39.

the long term, increased State participation will augment the Federal monitoring effort, reverse the derailment trend, and minimize the effects of catastrophic hazardous materials releases."

This projection has been borne out in rail accident statistics. FRA figures for 1983 show train accidents declining to an all time law—fifteen percent below the total for 1982. Railroad accidents attributed directly to faulty tracks decreased 22.2 percent in 1982 and equipment-caused accidents have dropped by 21.8 percent for the same year. These types of accidents are preventable and have been the focus of the rail safety program. Indeed, John H. Riley, Administrator of the FRA testified before the Subcommittee on Transportation of the House Committee on Appropriations on April 2, 1985, that preliminary data for 1984 indicate that train accidents decreased 3.2 percent for 1984, compared to 1983, from 3,776 to 3,654. When normalized by train miles, which increased by 6.1 percent, the decrease in train accidents was 8.7 percent. Further noted was an exceptional improvement in the railroad industry safety record over the past five years. Between 1980 and 1984, train accidents decreased 55.5 percent, or 46.7 percent when normalized by train miles; railroad injuries declined 38.2 percent; railroad fatalities were reduced 12.1 percent; and grade crossing accidents declined by 25.3 percent.

The results of a survey conducted by NARUC indicate the same downward trend in accidents. The results of the survey revealed a correlation between accident reduction and the number of participating States. Increased State participation was accompanied by a reduction in rail accidents.

The above-noted statistics and the results of the NARUC survey strongly support the fact that this program works. No longer is the railroad industry plagued by the 11,000 accidents per million train miles that prompted the establishment of the Federal rail safety program in 1970. At that time, Congress agreed that an active State role was essential to assure a safe railroad system. It is through the combined efforts of Federal and State officials, as well as those of railroad management and labor that rail accidents have decreased.

Nevertheless, at a time when the rail safety grants-in-aid program is achieving the results which were envisioned at its inception, the FRA is seeking its demise. The FRA has once again requested no funding for the State safety program. Such a move runs counter to the regulatory policy of encouraging State participation in lieu of increased Federal involvement in local program implementation. Indeed, the FRA's desire to eliminate the rail safety grants-in-aid program is baffling in view of the FRA's own testimony before the House last month regarding the exceptional improvements in railroad safety.

On April 13, 1983, an FRA representative testified before the Subcommittee on Transportation and Related Agencies of the House Committee on Appropriations that the decision to terminate the program was purely fiscal. However, without State participation, the Federal government would have to assume the full costs of rail safety inspection rather than only half that amount.

In testimony before the House Appropriations Transportation Subcommittee on April 2, 1985, John Riley demonstrated his lack of understanding of the State Participation Program. He justified the Administration's recommendation of no further funding for the program primarily on grounds that, in view of the magnitude of the Federal budget deficit, the rail safety program is a logical program to eliminate. Mr. Riley stated that interested States would absorb the cost of the program due to a surplus of State funds. According to Mr. Riley, 28 States will participate in the program if the funding to the States is cut off. Thus, he declared, the program is being maintained for only 33 inspectors. He went on to state that the budget proposal is merely a matter of cost transfer and not a discontinuance of service. Accordingly, there will be no impact on safety because these States will continue the program. In the opinion of Mr. Riley, the original intent of the program was to provide seed money for the States and not permanent support.

In response to Mr. Riley's testimony, we offer the following points:

1. Elimination of the program will not have a positive impact on the Federal deficit.

That impact, unfortunately, will be negative, causing the Federal government to fund 100 percent of what the States are now doing on a 50/50 basis.

2. Most States have a surplus and can readily support their program. Twenty-eight States will continue with a loss of only 33 inspectors. The budget proposal is merely a cost-transfer, not a discontinuance of service.

We dispute the FRA's assertion that most States have a surplus to fund the program if Federal funds are cut off. Oregon certainly has no such surplus. We also dispute the statement that 28 States will remain in the program and that, therefore, Federal funds only attract 33 inspectors.

In 1984, the NARUC Staff Subcommittee on Railroad Safety and the National Conference of State Railway Officials (NCSRO) conducted a survey of States participating in the FRA safety program. Of the 24 NARUC member States [6] which responded, 12 of them stated that they would drop their rail safety program if Federal funding is eliminated. [7]

This would leave only 20 States, not 28 as indicated by the FRA, participating in the program. The loss of these 12 States would mean a loss of 36 inspectors. In addition, seven of the States responded that they were uncertain of their continued participation if funds are eliminated. [8] Their potential drop-off poses a threat of losing another 26 inspectors located in those seven States. These numbers indicate that possibiy 62 of the 102 State inspectors may be lost or 75 percent of the State inspectors, if Federal funding is eliminated. [9] A sampling of these States indicates this data is still valid in 1985.

Accordingly, the FRA's budget proposal is tantamount to a discontinuance of the participation program. Therefore, Mr. Riley's contention that safety will not be compromised because most States will stay in the program is unfounded. The FRA apparently views the railroad safety program as a State program, ignoring the fact that railroad safety is an area in which the FRA has been directed by Congress to preempt State jurisdiction. Under the present statutory scheme, the States perform a Federal function at the direction of a Federal agency. Accordingly, participating States should not be required to fund 100 percent of the federal rail safety program.

3. The original intent of the program was to provide seed money for the States and not permanent support.

This assertion fails to comprehend the intent underlying the Rail Safety Act. The States' participation program was established by Congress in the 1970 Railroad Safety Act as a way to attract States' participation in the federal rail safety program. Nowhere in the legislative history of the program is there any mention of seed money or temporary support for State participation. Congress has always recognized that the States are assisting in fulfilling a Federal responsibility.

As noted by many States responding to the NARUC survey, Federal cut-backs in the rail safety grants-in-aid program will result in serious repercussions for the gains made in rail safety as a result of this program. These repercussions include: (1) increased Federal costs if the FRA has to increase its staff to compensate for the reduction in State inspectors; (2) lack of incentive by railroads to continue high standards of maintenance since inspections would be reduced; (3) reduced coordination between the States' and the FRA; and (4) a loss of uniformity between the States if they are forced to operate their programs on their own. Twenty-two States noted in their survey response that rail safety programs in adjacent States have a positive effect on their own States' program, especially with respect to equipment as it moves from one State to another. Thus, such uniformity is very important. Arguably, each State that is forced to drop its rail safety program will adversely affect the safety program in an adjacent State.

The advantage of the rail safety program, in addition to its obvious value in protecting public safety, lies in the fact that it encourages the States to contribute their own funding and manpower to assist the Federal government in fulfilling its various transportation safety responsibilities. Utilizing State resources to implement Federal safety standards reduces the need for a large Federal field staff. Moreover, the Federal government gains the benefit of State expertise when enforcement responsibilities are carried out by officials best able to assess the unique requirements of a particular locality.

With 300,000 miles of railways and 1.7 million freight cars, this Nation cannot afford to curtail its rail safety program. Last year, Congress appropriated only $1.9 million for the program in a deliberate attempt to use up carry-over funds from previous years. When all grants to the States are complete, FRA will disburse over $3.2 million for FY 1985. Therefore, it will be necessary to appropriate $3.5 million to ensure adequate funding in FY 1986. We respectfully request that the Subcommittee reiterate its support for this important program by approving its reauthorization with funding of $3.5 million in the fiscal year 1986 FRA budget in order to continue at least partial Federal funding of the program.

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[6] *Ibid.* (April 19, 1982), p. 39.
[7] *Ibid.* (April 19, 1982), p. 39.
[8] *Ibid.* (April 19, 1982), p. 39.
[9] *Ibid.* (April 19, 1982), p. 39.

ADMINISTRATION OF THE GRANTS-IN-AID PROGRAM

As important as adequate and dependable funding is to the rail safety program, a true Federal-State partnership is essential to an effective program. The GAO has been critical of FRA implementation of the program in the past, specifically citing FRA's reluctance to encourage State participation and its reticence in providing the proper guidance to the States. [10] Specifically, the NARUC believes that State participation in enforcing Federal rail safety standards must be based upon strong cooperation and understanding between the FRA and the States. During the early years of the State participation program, relations between the FRA and the participating State agencies were often strained and confrontational. We believe that this adversarial relationship discouraged new States from entering the program, while at the same time resulted in inefficiencies in the participating States.

In later years, the relationship between the FRA and the States began to improve. We trace this improvement to the success of the State/Federal Task Force on Improvement of the State Participation Program which met in 1980. As a result of the work of this Task Force, which was comprised of FRA and State representatives, a spirit of cooperation and understanding began to appear in the Federal/State program. Unfortunately, the Task Force has not met since that time, despite recent State and industry attempts to revive it. The uncertainty of continued funding has confounded efforts to reconvene the Task Force.

Better Federal-State communication would also help avoid any duplication of inspection efforts. Under current policy, the FRA requires monthly activity reports from the States but provides no reciprocal report to the States. This sometimes forces States to "second guess" the FRA, building the potential for duplicate efforts into the system. A stronger FRA railroad safety management program will help Federal and State inspectors to better perform their responsibilities.

In addition, we believe that the FRA must make serious efforts to solicit the participation of States not currently in the program. As noted, the relationship between the FRA and the States has at times been strained. By improving its relationship with the States currently participating in the program, and by encouraging nonparticipants to enter, we believe that the Federal/State rail safety partnership can be as successful as that which was established to oversee the natural gas pipeline safety program.

CONCLUSION

The growing level of State participation and the corresponding decrease in the number of rail accidents stand as the best evidence of the importance of the FRA's State rail safety program.

The advantages of the Federal-State partnership enforcing railroad safety regulations—the dollars saved in potential property damage and the immeasurable value in protecting lives—are adequate justification for the continued authorization of the program and for the provision of full funding. However, this program offers an additional beneficial feature in that the financial burden is shared by both the Federal and State governments. In this time of necessary budgetary restraint, such an arrangement is practical and efficient. The alternative suggested by the Reagan Administration is to eliminate all funding, which places at risk the continuation of this essential safety program. Accordingly, we seek your help in preserving the State rail safety program.

GRANTS-IN-AID: NUMBER OF STATES AND PARTICIPATING INSPECTORS AS OF FEBRUARY 1, 1984

State	Track inspectors	Motor, power and equipment (MPE) inspectors	Operating practices inspectors	Signals and train control inspectors	Total
Alabama	2	2			4
Arizona	1(1 1)	1		1	4
California	2	1			3
Connecticut	1				1
Florida	2	2			4
Illinois	4				4
Iowa	3				3

[10] *Ibid.* p. 41.

GRANTS-IN-AID: NUMBER OF STATES AND PARTICIPATING INSPECTORS AS OF FEBRUARY 1, 1984—Continued

State	Track inspectors	Motor, power and equipment [MPE] inspectors	Operating practices inspectors	Signals and train control inspectors	Total
Kansas	1				1
Louisiana	1				1
Maryland	1(¹ 2)	2(¹ 1)	1		7
Michigan	4				4
Minnesota	1				1
Missouri	3				3
Montana	1				1
Nebraska	1	1			2
Nevada	1				1
New Hampshire	1				1
New Jersey	1(¹ 1)				2
New Mexico		1			1
New York	3	3(¹ 3)			9
North Carolina	2	1			3
Ohio	3	4			7
Oklahoma	2				2
Oregon	2	2			4
Pennsylvania	4	3			7
South Carolina	1	1			2
Tennessee	2	2	1		5
Texas	3	2	3		8
Utah	1	1			2
Virginia	2				2
Washington	2	2	1	1	6
West Virginia	2(¹ 1)	3			6
Total (32 States)	65	38	7	1	111

¹ Denotes nonfederally funded.

CRITERIA FOR STATE ACCIDENT SAMPLE

General.—An attempt was made to choose two groups of six States each: a) States participating and b) nonparticipating States (as defined below) which in 1979 had comparable accident totals for track and equipment-related accidents.

Purpose.—To determine if the number of accidents attributed to track and/or equipment problems declined at different rates for participating vs. nonparticipating States.

Definitions.—Participating States—States of long-term participation and the FRA/State Participation Program fully, or nearly fully, certified in track and equipment inspection programs.

Nonparticipating States—States which do not or have participated only for a short period of time.

STATE ACCIDENT SAMPLE TRAIN ACCIDENTS BY STATE, BY CAUSE

	1979		1982	
	T	E	T	E
Participating States: ¹				
Florida	58	22	8	8
New York	130	65	55	33
Ohio	198	86	72	38
Oregon	30	36	20	40
Pennsylvania	331	104	96	40
Washington	63	45	21	7
Total	810	358	272	166

STATE ACCIDENT SAMPLE TRAIN ACCIDENTS BY STATE, BY CAUSE—Continued

	1979		1982	
	T	E	T	E
Nonparticipating States: [2]				
Arkansas	61	29	29	17
Indiana	130	51	58	32
Kentucky	151	61	57	15
South Dakota	27	6	25	5
Texas	297	117	183	80
Wyoming	22	24	15	16
Total	688	288	367	165

[1] T = 66.4 percent reduction; E = 53.6 percent reduction.
[2] T = 42.2 percent reduction; E = 42.7 percent reduction.

Source: Accident/Incident Bulletins Nos. 148 and 151, Federal Railroad Administration, 1980 and 1983.

STATEMENT OF ALAN SCOTT, CHIEF, RAIL AND MOTOR CARRIER LAW ENFORCEMENT, WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, OLYMPIA, WA

The Railroad Safety Act of 1970 was passed by Congress with the specific intent to promote safety in all areas of railroad operations and to reduce railroad related accidents, deaths, and personal injuries. The Act specifically gives the Secretary of Transportation authority to promote regulations that are "nationally uniform". Under Section 206 of the Railroad Safety Act of 1970, Congress recognized the role state's have played in railroad safety over the years, and authorized the states to continue to have an active role in the administration of a rail safety program. The State-Federal Participation Safety Program has been vital to the states in addressing railroad safety problems throughout the United States.

The elimination of federal funding of this vital safety program would affect the state's railroad inspection capability at a critical stage in the program. For example, the state of Washington is being considered as a national depository for high level radioactive waste. Transportation of hazardous waste will be by rail and motor carrier. In addition, railroads operating in the state of Washington and other states throughout the nation are seriously considering the elimination of the occupied caboose on the rear of trains. This is a significant change in the industry tantamount to the change from steam engines to diesel locomotives back in the late 1940's. It will be even more important with these significant changes to continue funding the rail safety program.

The Administration has tried to impress members of the House and Senate that this rail safety program is a state program and therefore, funding obligations are better left with the states. The truth is, the rail safety state participation program is a federal program where states share in the cost of enforcing federal railroad safety regulations for the federal government. As stated in my introductory remarks, the states are virtually preempted from enforcing state regulations involving railroad safety. The preemption provisions set forth in the Railroad Safety Act of 1970 are intended to insure "uniformity", not only in promulgation of rules affecting interstate railroads, but in the enforcement of those rules and regulations. Under the federal-state partnership, the funding mechanism has insured that uniformity persists between the state and FRA. By eliminating the funding, there will be no obligation on either the state or FRA to continue to coordinate efforts to insure uniformity in enforcement of the federal regulations. This would defeat the purpose and objectives of Section 206 of the Railroad Safety Act of 1970.

The Administration has made a weak argument that the state-federal partnership is not cost effective in that few states would drop out if funding were eliminated. The Administration also argues that the additional cost is small to the states and would not provide a compelling reason for the states to drop out. The truth of the matter is that most, if not all states would either drop out of the program or cut back the number of state inspectors participating in the program. A National Association of Regulatory Commissioners (NARUC) survey report reflects just the opposite of what FRA is telling members of Congress. If funding is eliminated 75% of the state inspectors would possibly be lost. That report is available for your review if requested.

The bottom line is that for every federal inspector hired, the cost to the federal government is twice the amount it costs to hire one state inspector. I'm sure if an in-depth analysis of FRA's current policy concerning deployment of FRA inspection forces were conducted, we would find some areas of the nation where inspection coverage is at a minimum, or there may be no coverage at all; and some areas of the country, where there may be more coverage than is really required. If the FRA would have chosen to locate federal inspectors in states where coverage is at a minimum, thereby depending on the states that are participating in the program to provide adequate coverage in their states, there wouldn't be such an attempt by FRA to tell members of Congress that the program is not cost effective. A GAO report criticized FRA for their deployment policy in managing the state rail safety program.

In fiscal 1985, 1.9 million was granted to the states to continue funding; this was 1.2 million less than the authorization committee in the Senate recommended. With carryover funds from previous years all the states were able to receive their 50% match. The original authorization for fiscal 1985 of 3.2 million should be reauthorized and appropriated for fiscal 1986. At the very minimum, Congress should at least continue the funding at the minimum levels granted in 1985. If federal funds are eliminated in fiscal 1986, the state of Washington, along with many other states, cannot properly react to address the shortfall in funding through our state legislatures. If Congress is absolutely committed to cutting this program, then, there should be at least a one or two year transitional funding period to allow states to seek other funding through their respective legislatures. Mr. Riley, FRA Administrator, in a February 7, 1984 letter sent to Senator Mark Hatfield, suggested that there by transition funding to give the states the opportunity to seek additional funding through their respective legislatures.

Federal and state government have a legitimate role to play in railroad safety. It is in the public interest to continue funding the state-federal rail safety program.

I would urge you to continue the successful partnership created through Section 206 of the Railroad Safety Act of 1970 by extending the funding for fiscal 1986.

Thank you for your consideration.

Senator PACKWOOD. Thank you.

Mr. Druhan.

STATEMENT OF WILLIAM T. DRUHAN, PROGRAM DIRECTOR, AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS, REPRESENTING THE NATIONAL CONFERENCE OF STATE RAILWAY OFFICIALS

Mr. DRUHAN. Thank you, Mr. Chairman. I just want to make a couple of comments, primarily with regard to the statements that were made by Mr. Riley. When you asked the question, why is there such a disparity between the States' view and the FRA view on the program, in my judgment, he did not respond to your question.

What he told you was that in their judgment 70 of the 111 inspectors would remain. Then he said that "if you accept these figures" and proceeded to contend the program would continue without Federal funding—but he did not say how he got the figures. I would like to submit that what they do is conduct a telephone survey of the State program people and ask them point blank, if the funding is removed, would you continue? At that echelon, the guy says I don't know, which is an honest answer.

Senator PACKWOOD. It is an honest answer, yes.

Having served in the State legislature, I can see what will happen. Some States will keep it, some States will not. It will depend upon the budget situation in each State. It will depend upon the Governor. It will depend upon the chairman of the relevant committee in the State senate or the house of representatives. There will be almost no way of projecting who will keep it and who will not.

Mr. DRUHAN. That is absolutely my point, because those people do not know, and especially at that level in the Departments of Transportation.

They did not even bother to ask the CEOs in the Departments of Transportation. I think if they did, though, they would get the same answer because the CEOs do not know either. It is up to the State legislatures.

Second, I would like to make the point that it is continually stated that the basis of the administration's position is, in this age of budget crunch, that we must draw a line for those items that can support themselves.

I suggest that, if you are using this program as an excuse for balancing the budget, you are not facing up to the responsibility of reducing the budget, nor are you facing up to the responsibility of evaluating this program.

This program is safety related. Despite Mr. Riley's statement, it does have a cost-benefit ratio that is very favorable. Where he gets his favorable ratio is based on the fact the program is a Federal responsibility. Obviously, if they can unload that responsibility onto the States, it is beneficial to the Federal Government. It is not, in the true sense, a beneficial cost-benefit ratio other than the fact that they are getting quite a bargain by the States taking over 50 percent of the cost of their responsibility.

Also keep in mind for every State inspector who drops out of the program, he will have to be replaced by a Federal inspector, or you are going to degrade safety.

The Federal inspector gets more money than a State inspector. So you are not going to have a saving by eliminating State inspectors. You are going to have a loss. The reason there are not more State inspectors is we cannot compete with the Federal wage scale. That is why there are only 32 States participating in the program with only 111 inspectors. If we could compete with the Federal Government and pay them the same wage scale there would be greater participation—you have to understand that the State inspector and the Federal inspector do the same thing at the same point, at the same time. The qualifications, everything, are the same.

The only incentive to a State inspector is he is under the control of the State and he does not have to move out of the State like a Federal inspector would have to.

The final thing I would like to state is in any consideration of eliminating the program, no one has said eliminating the program will help safety. What you are doing by eliminating the program is you are going to take a calculated risk regarding safety for the minimum amount of money that would be well beyond the decimal point in any Federal deficit.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF THE AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS

Mr. Chairman, my name is William T. Druhan. I appreciate very much your invitation to appear here today to express the Association's views on the Railroad Safety State Participation Program.

AASHTO is strongly opposed to the fiscal year 1986 budget proposal that no funds be provided for the Railroad Safety State Participation Program. With more than ⅔ of the state representatives participating and with no dissenting votes, AASHTO adopted a policy position regarding railroad safety providing in part: "AASHTO strongly supports the financial role that the federal government must play in order to insure a continuing Federal-State Railroad Safety Participation Program promulgated by the Rail Safety Act of 1970."

There is no economical or philosophical reason for failing to provide funds for this program. The importance of the program is far out of proportion to the required funding. This program is probably one of the smallest government programs from a funding standpoint. It is currently operating in 32 states with a total combined appropriation of less than $3 million a year.

This program is probably the most cost efficient and effective method for administering a national rail safety inspection program. Failure to fund this program will terminate the existing partnership between federai and state safety inspectors, thereby reverting to the chaotic situation which existed prior to the establishment of this program.

The rail safety record improved significantly each year for the last several years until last year. The reason for this change is not known. It is known, however, that elimination of this program will not enhance safety. Conversely it could adversely impact safety whereby the increased injuries and deaths recorded last year could become a trend.

In addition, elimination of this program will no accomplish its purported purpose of reducing the federal deficit. To the contrary, FRA appropriations must be increased by more than the amount currently provided to the states in order to compensate the federal inspectors replacing the displaced state inspectors including the wage differential between the two.

Senator PACKWOOD. Thank you.

Gentlemen, the only question I was going to ask of you was the question you just referred to.

I will ask you, Mr. Hardy, if you have any different judgment? How do we know how many States will participate in this program if we end Federal funding?

Mr. HARDY. I really do not. Mr. Druhan and you, Senator, have pretty well covered it. It is going to be hit and miss, and the program nationwide is going to suffer.

Mr. DRUHAN. I can say, Mr. Chairman, that certain States have already stated that they will not continue. We know that is a fact.

Senator PACKWOOD. Even that may not necessarily be true. I know the vagaries of the State legislative process. It is here today, gone tomorrow. A couple who said no will be yes, and a couple who said yes will be no.

Mr. DRUHAN. I think these were based on the fact that they were not even going to ask the State legislatures.

Senator PACKWOOD. Senator Exon.

Senator EXON. Mr. Chairman, thank you very much.

Mr. Druhan and Mr. Hardy, I just want to touch on a couple of questions with you.

We have become very much concerned around here, though probably not as concerned as we should be, about the overall matter of rail safety. We have always been preoccupied with air safety, concentration of airplanes at our major airports, and so on.

As safety experts, as far as your individual States are concerned, what can you tell me about your view, not only as to your States but as to the organization that I am sure you have with other rail safety experts in other States with regard to overall rail safety?

I get the perception—maybe just because the news is more prevalent today—that we have more wrecks, more derailments. We hear constantly about a certain section of a certain community being

evacuated because dangerous chemicals are on a train that has run off the track for one reason or another.

What is your personal view with regard to rail safety? Is it becoming more of a problem or less of a problem? Are we focusing enough attention on it, especially with regard to what I presume to be our preoccupation with other types of safety?

Mr. DRUHAN. Rather than say personally, Senator Exon, I would state that the overall national statistics show that safety is improving.

What the issue is is that anything less than perfection needs improvement.

If you compare rail with other modes, you will find that rail safety is probably better than any other mode.

Senator EXON. Excuse me.

When you make the statement you just made, are you saying that with regard to injury or loss of life to individuals, or are you talking about the number of trains that derail? Are the number of trains that derail less than they were, say, 10, 20, or 30 years ago?

Mr. DRUHAN. Yes, sir.

Senator EXON. They are?

Mr. DRUHAN. Very much less.

Senator EXON. Are there more trains operating today? I am talking about a percentage of trains involved in accidents—if you did not have any railroads, you would not have any accidents. Are all the statistics positive with regard to rail safety?

Mr. DRUHAN. On a long trend, yes, sir.

If you take a particular blip, however, no.

One of the problems is that there are so few accidents, it does not take a very big accident to give a blip in the trend.

But you asked how does it compare with the number of accidents and deaths. My statement is it compares favorably with any other mode for deaths, injuries, or property damage. What you have to perceive is when you started out your statement, you began with "you read in the paper." You have to understand that trains wreck. Trucks have accidents and airplanes crash. It is the key word that they always use.

If a truck has an accident with hazardous material, that is very serious only to the particular community, where that it happens. When a train has an accident, there is the question of quantity. There are many cars, put all together with a particular type of material. This is why they put them in there, because it is safer to take it by train than by truck. An accident will cause more of a publicity, but not necessarily a larger death rate, injury rate, or property damage.

It depends on the individual accident.

Are there more train accidents now? I say there are less in total numbers or based on miles traveled, tonage carried, personal injuries or total property damage. Damage per accident has increased. But one of the things you have to remember is in statistics, if you are talking about derailments, trains go faster now because they are in better condition. So if there is a derailment, it will probably be worse than if the train were going 5 to 10 miles per hour and slips off the track, where it can slip back on again. Things were so

poor a few years ago before the Staggers Act that trains could not go fast enough to have a decent accident.

We have improved that.

Senator EXON. Well, we certainly want to put a good foot forward on this having the most exciting accident possible, in rail transportation.

Let me ask one more question, Mr. Chairman. And I want the advice of the safety experts on this.

At our hearing last week, I believe it was, regarding Amtrak and whether or not funding for that should continue, a fact was brought out there that I am not sure I fully understood.

It seems that under the present structure, at least in certain corridors—and I don't know whether this is true across the Nation or just in certain sections of our country—it is the Amtrak system that hires and supervises the people who direct the trains—the tower operators, and so on.

Is that true in your section of the country? Who actually directs the trains?

Mr. DRUHAN. Senator Exon, I represent the States Transportation Departments of all 50 States. In the case of Amtrak, Amtrak directs the trains on the track it owns, which is the Northeast corridor. In the other sections of the country, the Amtrak trains are dispatched by the owner of the property, which would be all of the other major railroads. If it is up in the chairman's area, that would be the Burlington-Northern, or the Union Pacific. They direct all trains in their tracks, be it the Amtrak pasenger train or the freight train.

In the Northeast corridor, Conrail is a truant. It gets its directions from Amtrak because Amtrak owns that track.

Senator EXON. So, from a safety standpoint, whether or not Amtrak continues—and I think it should—whether or not it continues, and whether the dispatcher, the tower operator who directs traffic, changes, the only possible concern we would have there, as far as a change is concerned, is in the Northeast corridor, where Amtrak owns the track?

Mr. DRUHAN. That would be correct.

Senator EXON. Do you have any particular view as to whether or not it would be difficult if Amtrak is closed down to transfer that responsibility to some other entity? Let's assume, for example, that Amtrak would be phased out. Let's assume that the proposed sale of Conrail does not go through. How would that transfer take place? Would that be routine or would that be difficult?

Mr. DRUHAN. That would be extremely difficult, but not from a safety standpoint. It is a political and economical problem that they would face. How could the property be transferred to somebody by October 1? Conrail does not own the property. They operate on the property with trackage rights. They cannot assume that responsibility.

It would not be a safety factor in the sense that Conrail, being the large railroad that it is, could certainly assume dispatching duties if it had the right to assume those duties. It would not be a safety factor.

There are other factors that enter into that that make the whole concept of eliminating Amtrak an impossible task.

Senator EXON. Well, I am glad to hear, at least from your standpoint, that it would not be a safety problem, but it would cause some difficulties along the line.

Mr. DRUHAN. You ought to understand that the rash of accidents Amtrak had last year have been investigated. They had a bad year. Again, understand that it does not take much to blip up the statistic. But I think that the accident investigations show that each accident occurred for a different reason, and that the cause can be corrected. It is just an unusual circumstance that there would be so many accidents for a variety of reasons within a short timeframe.

Senator EXON. Mr. Druhan, Mr. Hardy, thank you.

We will take into careful consideration the excellent testimony you gave today with regard to the cutback in the government's portion of safety at the local level.

Mr. DRUHAN. Thank you.

Mr. HARDY. Thank you, sir.

Senator EXON. Thank you, Mr. Chairman.

Senator PACKWOOD. That was good job, folks.

Thank you all.

We are adjourned.

[Whereupon, at 11 a.m., the subcommittee adjourned, to reconvene upon the call of the Chair.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF RICHARD L. GREENUP, DIRECTOR, DIVISION OF PUBLIC TRANSPORTATION OPERATIONS, FLORIDA DEPARTMENT OF TRANSPORTATION

In late 1977 and early 1978, the State of Florida experienced a series of catastrophic train derailments in northwestern Florida which killed eight (8) citizens, injured 158, and required the evacuation of thousands in four different communities. Subsequently, the Florida Legislature in June of 1978, passed legislation requiring the Florida Department of Transportation to assume responsibility for railroad safety inspection in accordance with the provisions for state participation under the National Railroad Safety Act of 1970 as amended. The Department, in accordance with Florida Statutes, promulgated the federal minimum safety standards as state law, employed three (3) track and two (2) equipment inspectors, and became certified by the Federal Railroad Administration to conduct track and freight car equipment inspections.

Since October 1, 1978, the Department has performed track and freight car surveillance and inspections in the state. In 1984 inspection was expanded to include safety appliances and power brakes. Both equipment inspectors are presently being trained by the Federal Railroad Administration for locomotive inspection. A new inspector of operating practices was employed in December 1984 and is presently being trained by the F.R.A. A copy of the derailment statistics for Florida for the past seven years is attached. Note that derailments in Florida have declined from 157 in 1978 to 30 in 1984. Also, attached is a comparison of the decline in derailments in Florida as compared to the United States.

Florida takes exception to recent testimony presented to the Senate and House subcommittees that federal inspectors are more productive than state inspectors because they are better trained. Florida's employment requirements for railroad safety inspectors are stricter than those of the F.R.A. Florida has recruited experienced railroad supervisors, all of whom have been trained and schooled at the Federal Railroad Administration's training school in Oklahoma City. The results accomplished by these inspectors in Florida are a strong argument for continuation of railroad inspections by the states.

There are approximately 6,186 miles of track in Florida. In the 8 year period between 1970 when the Federal Railroad Safety Law was passed and October 1978 when the Department assumed inspection in Florida, the federal inspectors had not covered, even once, Florida's 6,186 miles of track. Since state inspection began, all main and branchline trackage are inspected annually. For example, in 1984 state inspectors inspected 5,885 miles of track and listed 1,615 defects which were corrected by the carrier. During this same year, Florida's state inspectors inspected 28,710 cars for freight car standards and 15,514 cars for safety appliance standards. A total of 6,007 defects were found which were then corrected by the carriers.

Florida's railroad inspectors are located throughout the state at district transportation offices; this reduces travel and per diem. Also, it is the state's policy for the inspectors to meet with the mayors, city councilmen, and city engineers to explain the program and counsel the public officials on particular railroad problems or concerns that they may have. State inspectors are much more responsive to the city and county officials than the federal inspectors ever were or could be. Under the federal inspection program there is one federal track inspector in Jacksonville whose inspection responsibilities include Florida, Georgia, and South Carolina.

The elimination of 50% funding to the states by the F.R.A., will undoubtedly cause many states to drop out of the program, and represents a contradiction of the administration's policy of giving responsibility for programs that effect the grass roots public to the states. Congress has given the total responsibility for railroad safety to the F.R.A. By utilizing the state's participation program, the F.R.A. is meeting this responsibility for one-half of the total cost. Why not continue to participate in this program which is working so effectively?

Public opinion in Florida strongly supports the concept that railroad inspections belong at the state level. The trains run through the countryside and adjacent to the citizens' homes and places of business.

Florida recognizes that minimum safety standards for railroads must be uniform nationwide and that the F.R.A. promulgate uniform standards. Florida's working relations with the F.R.A. have been excellent. It has experienced no major administrative or operational problems.

In summary, based on the results of Florida's railroad inspection program, we urge the continuation of this state participation program with the F.R.A. paying one-half the cost. The joint federal/state effort has proven more effective than the state or F.R.A. going it alone.

TRAIN ACCIDENT REDUCTION—FLORIDA VERSUS NATIONWIDE

	Nationwide	Percent of change	Florida	Percent of change
Calendar Year:				
1977	10,362	.....	274	.....
1978	11,277	+8.8	157	−42.7
1979	9,740	−13.6	112	−28.7
1980	8,451	−13.2	83	−25.9
1981	5,781	−31.6	52	−37.3
1982	4,589	−20.6	37	−28.8
1983	3,906	−14.9	31	−16.2
1984	(1)	.....	30	−3.2

[1] Not available as yet

RAILROAD DERAILMENT STATISTICS, STATE OF FLORIDA, 7-YEAR PERIOD 1978–84

Railroad	Persons evacuated	Number	Yard	Percent	Main	Percent	Cause								Cost								Total	Fatalities	Injured
							Track	Percent	Equipment	Percent	Operations	Percent	Miscellaneous	Percent	Track	Percent	Equipment	Percent	Operations	Percent	Miscellaneous	Percent			
1978	400	157	110	70	47	30	78	50	25	15	46	30	8	5	1,245,948	28	898,553	21	1,048,417	24	1,177,994	27	4,370,912	8	140
1979	5,050	112	73	65	39	35	52	46	21	19	25	22	14	13	907,658	12	1,320,452	18	1,129,535	15	4,099,498	55	7,457,143	1	7
1980	0	83	50	60	33	40	26	31	12	15	29	35	16	19	807,262	42	176,701	9	236,646	12	723,549	37	1,994,158	0	4
1981	0	52	34	65	18	35	16	31	12	23	22	42	2	4	528,263	24	476,891	22	493,096	23	662,558	31	2,160,808	0	1
1982	50	37	23	62	14	38	10	27	6	16	16	43	5	14	1,133,294	45	307,984	12	507,138	20	581,225	23	2,529,641	0	2
1983	200	31	16	52	15	48	16	52	5	16	7	23	3	9	988,798	44	145,391	7	86,302	4	1,004,288	45	2,224,779	0	1
1984	0	30	14	47	16	53	7	23	2	7	18	60	3	10	725,351	26	1,010,349	36	831,281	30	228,682	8	2,795,663	0	0

Note.—The threshold for reporting each accident is damage equal to or exceeding the following: 1978—$2,300; 1979–80—$2,900; 1981–82—$3,700; 1983–84—$4,500.

MARCH 5, 1985.

Hon. SLADE GORTON,
Washington State Senator,
Hart Office Building, Washington, DC.

DEAR SENATOR GORTON: An analysis of the federal budget released earlier in the month disclosed that the Federal Railroad Administration request for railroad safety did not include for the railroad safety state participation program.

Every year the administration has failed to include funding the grant in aid for those states participating in the program. The Senate was successful, as in past years, to ensure funding continued in fiscal year 1985.

The elimination of this funding would have a measureable affect on rail safety in the state of Washington. As you know, this state may be selected as one of the major sites for the storage of high level radioactive waste. Transportation of hazardous waste will be by rail and motor carrier. In addition, railroads operating in this state are seriously considering the elimination of the occupied caboose on the rear end of trains.

Obviously, this is not the time to cut back on a safety program involving an industry that carries as much hazardous materials as the railroads do, when such drastic changes may take place in the industry.

From a survey conducted by the National Association of Regulatory Utilities Commissioners, most states involved in the program would have to cut back or eliminate the program if no funds are available. In the state of Washington this amounts to $250,000 for costs relating to six inspectors certified by the Federal Railroad Administration to inspect track, hazardous material tank equipment, safe operating practices of rail employees and inspections of railroad signal systems.

Certainly there would be no savings to the federal government if states have to drop out of the rail safety program and FRA later has to come back to the Senate to request additional funding to fill the void created if some 102 state rail safety positions are eliminated. For every state inspector eliminated where a federal inspector would be required to fill the void, the cost to the federal government is twice the amount it now costs to continue funding for state inspectors. Under the 50-50 funding relationship, you get two state inspectors for every one federal inspector hired.

In fiscal 1985, 1.9 million was granted to the states to continue funding the program; this was 1.2 million less than the authorization committee recommended for fiscal 1985. With carry over funds from previous years, we understand the state did receive their 50% match.

However, we understand that there may be a freeze on any additional funding for federal-state programs. We also understand that there is a FY 1985 supplemental appropriation bill that includes transportation programs that were authorized for full funding, but did not receive full funding. We suggest that maybe 1.3 million could be added into this appropriation bill along with the 1.9 requested for re-appropriation for FY 86 to make up the difference in the original authorization of 3.2 million.

As you know, the State of Washington's fiscal operations are based on a biennial budget. If federal funds are eliminated for the rail safety program in fiscal 1986, the state cannot properly react to address the shortfall in funding through the state legislature. There should be at least one or two year transitional funding of the federal-state rail safety program to allow the states to seek other funding through their respective legislatures.

Mr. Riley, FRA Administrator, in a February 7, 1984 letter sent to Senator Mark Hatfield suggested that there be transition funding to give the states the opportunity to seek additional funding through their legislature.

We know you have supported this safety program in the past. Would you please ask Senator Mark Andrews, Chairman, Senate Committee on transportation and other related agencies asking for his support for this program. Anything you can do to convince Senator Andrews and other colleagues on the Committee to continue funding for the grant-in-aid state railroad safety program would be appreciated.

Sincerely,

A.J. "BUD" PARDINI, *Commissioner.*

STATE OF NEW MEXICO,
STATE CORPORATION COMMISSION,
Santa Fe, NM, March 5, 1985.

Hon. JEFF BINGAMAN,
U.S. Senate, New Senate Office Building,
Washington, DC.

DEAR SENATOR BINGAMAN: We have recently been informed that the Administration has proposed no funding for Fiscal Year 1986 towards the continuation of the Railroad Safety Grants-In-Aid Program (45 U.S.C. § 435). We would like to request your assistance in supporting funding for these programs of vital importance to New Mexico.

The State Corporation Commission is currently in its second year of participation in the Motive Power and Equipment Inspector Program with the Federal Railroad Administration (FRA). The State Corporation Commission is charged by State Constitution and statutorily with overseeing the safety of railroad operation in the state. Due to insufficient monies within our own operating budget we have been unable to hire an individual to carry out any measure of these duties until we began participation in the FRA program. It is imperative that this funding continue to be allocated to enable our agency to perform the duties it is charged with, as well as to ensure the safety of all New Mexicans. Thank you.

Sincerely,

ERIC P. SERNA, *Chairman.*
JOHN A. ELLIOTT, *Commissioner.*
JIMMIE W. GLENN, *Commissioner.*

TENNESSEE PUBLIC SERVICE COMMISSION,
Nashville, TN, March 12, 1985.

Senator ALBERT GORE, Jr.,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR GORE: We would like to ask your active support of efforts to restore the Railroad Safety Grants-in-Aid program to the 1986 Federal budget. This program, which we have participated in since 1980, provides matching funds to participating states for rail safety efforts.

The effectiveness of rail safety program is well documented and represents a sound investment in a comprehensive safety plan. According to a General Accounting Office report, the nation's rail system destroys fewer lives and causes less property damage as a result of the Federal/State partnership.

Even in this day of tight federal budgets, it seems incomprehensible that, just as the Rail Safety Grants-in-Aid program is achieving the results which were hoped for at its inception, the Administration is seeking its demise. However, as last year, the FRA has once again requested no funding for the state safety program in its budget for the 1986 fiscal year. Such a move runs counter to the regulatory policy of encouraging state participation in the safety program.

While the Federal funds previously allocated to Tennessee have fallen short of 50% funding level designated in the program, the availability of these funds has demonstrated the Federal Railroad Administration's commitment to the joint Federal/State safety program and has permitted us to train inspectors in each of the FRA safety specialist categories. Since the FRA has less than 75 inspectors nationwide, it is through the efforts of the state inspectors that railroad accidents have been reduced.

The advantage of the current joint Federal/State program, in addition to its obvious value in protecting public safety, lies in the fact that it encourages the states to contribute their own funding and manpower to assist the Federal government in fulfilling its various transportation safety responsibilities. Utilizing state resources to implement Federal safety standards reduces the need for a large federal field staff. In addition, the Federal government gains the benefit of state expertise when enforcement responsibilities are carried out by officials best able to assess the unique requirements of a particular locality.

If the Rail Safety Grant Program goes unfunded as proposed by the Federal Railroad Administration, the appropriation for federal rail safety will have to be increased. This will occur because most states will drop out of the program leaving the FRA to enforce safety standards independent of the states and absent the states' sizeable contribution to the total cost. Tennessee will most definitely drop out of the FRA program if the funding is not maintained.

Thank you for your assistance with this matter. Also, if you would talk with your associates in the Senate who will have a chance to vote on this issue in Committee, we will be most grateful.

Sincerely,

JANE ESKIND, *Chairman.*
FRANK COCHRAN, *Commissioner.*
KEITH BISSELL, *Commissioner.*

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA,
Charleston, WV, March 27, 1985.

Hon. JOHN D. ROCKEFELLER, IV,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR ROCKEFELLER: The Federal Railroad Safety Act of 1970 was passed by Congress in the fall of that year, and Section 206 of that Act provided for States to participate in this Federal Safety Program through funds administered by the Federal Railroad Administration.

The results of both the 1970 Act and State Participation were so encouraging by reductions in accidents and property damage and lives lost, that Congress continued to provide money for this safety program by passing the Rail Safety Improvement Act of 1974, Federal Railroad Safety Authorization Act of 1975, and similar acts every year or two to continue the funding for this valuable rail safety program, and State participation in them. This State funding has been authorized through FY 1985, but pressure is being applied by opposing forces to discontinue it. That is what this letter is all about.

The Federal program will not be scrapped. It's the 50/50 funding for State participation which appears to be headed for the chopping block. And if the argument is analyzed, the logic just isn't there for this reason:

Here in West Virginia the FRA has no track inspectors; our State inspectors examine about 6600 miles of track a year. These inspectors are fully certified by FRA, inspect by FRA rules, and submit reports on FRA forms, which are mailed to the FRA in Washington. The Federal Railroad Administration subsidizes two (2) of these inspectors on a 50/50 basis, but since we pay all three, FRA is reaping the benefit of three (3) full-time inspectors for only one third (⅓) the cost for their own inspectors to do the job.

Our point is this: With FRA-certified State inspectors, FRA can do its job at less than half the cost of using Federal inspectors. It makes sense therefore to continue the State participation programs because the nation is reaping the benefits of the rail safety program at a minimal cost. If our State funding is discontinued, we would have to reduce our rail safety forces, and to maintain the same levels of Safety, FRA would have to increase its forces—and pay them 100 percent, instead of the outlays of 50 to 33 percent as at present, for the same work.

Gentlemen, we trust you will recognize that our position is to save lives and property from destruction and damage by rail accidents, and that Federal dollars can be saved, not increased, by continuing to support State participation in this most worthwhile program developed by Congress a decade and half age, with nothing but improved results since that time.

Thank you for your understanding and support.

Sincerely,

J.J. DWYER,
Director, Railroad Safety Division.

PS: In addition to your own vote on this matter, we would sincerely appreciate your contacting thereon the Chairmen of the Senate and House Subcommittees considering this measure. For your convenience, we have listed below their names and committee numbers.

STATE OF ILLINOIS,
ILLINOIS COMMERCE COMMISSION,
Springfield, IL, April 4, 1985.

Hon. BOB PACKWOOD,
Chairman, Subcommittee on Surface Transportation,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN PACKWOOD: I am writing to urge your support for the reinstatement of funding for the state rail safety program in the FY86 federal budget. As in

past years, the administration did not include funding for reimbursing states for enforcement of the federal safety program in the Federal Railroad Administration budget. The cost for continuing this program in FY86 would total approximately $3.5 million.

The State of Illinois currently employs four full-time track inspectors under the state rail safety program. Through this program, the Federal Railroad Administration reimburses the State for fifty percent of the cost of our track inspectors. It is money well spent. The accomplishments of this joint federal-state effort in Illinois alone in the past few years have been remarkable: Track caused derailments have substantially declined, from 147 in 1979 to only 44 in 1983. While the final figures for 1984 are still being processed, the first eight months showed only 19 track related accidents in Illinois, largely the result of our comprehensive track inspection program. Stated in different terms, the 147 accidents in 1979 caused $7.8 million in property damages. For 1984, this figure has totalled only $1.2 million, even without taking inflation into account. Other states have had similar experiences. Clearly, the minuscule federal investment in this joint federal-state program has provided a very substantial public return on investment.

Without adequate federal funding, it would be very difficult for the State of Illinois, like many other states, to continue the inspection program at the present level. The figures clearly demonstrate that the benefits of the rail safety program to the citizens of this nation, including Illinois, far exceed its costs of $3.5 million.

I respectfully ask that your committee include $3.5 million for the rail safety inspection program in the Federal Railroad Administration budget for FY86.

Thank you in advance for your help in this matter. If I can answer any questions which you might have, please contact me at your convenience.

Sincerely,

PHILIP R. O'CONNOR, *Chairman.*

RAILROAD COMMISSION OF TEXAS,
April 11, 1985.

Hon. LLOYD BENTSEN,
U.S. Senate, Hart Building,
Washington, DC.

DEAR SENATOR BENTSEN: Continued federal funding for 50% of the cost of state railroad safety programs was not included in the Federal Railroad Administration (FRA) budget proposed for Fiscal Year 1986. We need your help to restore $3,500,000 to the FRA budget in order to continue this program in Texas.

Without the federal matching funds, the Railroad Commission will have to eliminate five (5) inspector positions from a ten (10) person staff. The Texas budget crisis precludes any possibility of replacing federal funds with state funds.

Facts addressing the importance of an effective Texas rail safety program to supplement the federal safety program are attached for your information.

The Railroad Commission would appreciate your assistance to preserve this essential safety program. We request that you convey expressions of your support for a continuation of funding for the state railroad safety program to the chairmen of the subcommittees that are responsible for the FRA budget. For your convenience, a listing of the appropriate subcommittee chairmen is attached.

BUDDY TEMPLE, *Chairman.*
JIM NUGENT, *Commissioner.*
MACK WALLACE, *Commissioner.*

MISSOURI PUBLIC SERVICE COMMISSION,
Jefferson City, MO, April 11, 1985.

Hon. BOB PACKWOOD,
Chairman, Subcommittee on Surface Transportation,
U.S. Senate, Washington, DC.

DEAR SENATOR PACKWOOD: The Public Service Commission of the State of Missouri is very concerned about the proposal of the federal administration to eliminate federal funding for the Railroad Safety State Participation Program administered by the Federal Railroad Administration (FRA). Missouri was the first state to become certified under the program in 1974, and the 41% reduction in the number of track-caused derailments in Missouri since 1978 can be traced to the cooperative

track inspection program between the State of Missouri and the federal government.

The federal administration now seeks to eliminate this cooperative effort by attempting to have the program financed entirely by the participating states. Last year, Congress appropriated $1.9 million to fund the program. There was a $.5 million carry-over from the previous year, so the fiscal year 85 appropriation amounts to $2.4 million. This amount should fund the federal portion of all existing state programs for the remainder of this fiscal year, and a like appropriation for fiscal year 86 should be adequate. Our Commission has three certified track inspectors and we anticipate approximately $75,000 for federal funding for federal fiscal year 85.

Proper administration of the present program could make it more cost effective and have a greater impact on reducing train derailments. For example, in addition to our three track inspectors, the FRA has three of its own track inspectors located in Missouri, one of whom works full time in Missouri and two of whom inspect Missouri track on a part-time basis. In Wisconsin, which does not participate in this federal-state program and has no state track inspectors, there is one federal track inspector to patrol the entire state. It would seem that the assignment of more FRA track inspectors in Wisconsin and less in Missouri would result in a more effective allocation of manpower and a greater likelihood of a reduction in the number of derailments.

If federal funding for the participation program is eliminated, the Commission envisions a fragmented track inspection system that will replace a very effective and workable program.

The Commission urges you to support a $2.4 million appropriation for the Railroad Safety State Participation Program. The benefits to the citizens of Missouri as well as the rest of the country are real and measurable, and we hope these benefits will be allowed to continue.

Sincerely,

WILLIAM D. STEINMEIER, *Chairman.*
CHARLOTTE MUSGRAVE, *Commissioner.*
ALLAN G. MUELLER, *Commissioner.*
CONNIE B. HENDREN, *Commissioner.*
JAMES M. FISCHER, COMMISSIONER.

STATE OF NORTH CAROLINA UTILITIES COMMISSION,
April 17, 1985.

Hon. BOB PACKWOOD,
Chairman, Subcommittee on Surface Transportation,
U.S. Senate, Washington, DC.

DEAR SENATOR PACKWOOD: As Chairman of the Subcommittee that will review the administration's transportation funding bill, this is to respectfully urge you to provide full funding for the U.S. Department of Transportation's Railroad Safety Grant-In-Aid Program.

The State of North Carolina, through the Utilities Commission, has actively participated in a railroad safety program in cooperation with the Federal Railroad Administration (FRA) since 1978. At the present time, we employ three safety inspectors who have been fully certified by the FRA to enforce federally mandated safety regulations. In return for providing funding and personnel to conduct this very important and comprehensive safety program, North Carolina receives federal monies of up to 50 percent of the program's cost, resulting in a national safety program being conducted at only a fraction of the cost to the U.S. Department of Transportation that would otherwise be required. We feel that this partnership is the most economical and efficient manner by which to provide an effective and uniform railroad safety program and that it should be continued.

In the administration budget for fiscal year 1986, no funding has been provided for the Railroad Safety Grant-In-Aid Program. For fiscal year 1985, Congress appropriated $1.9 million, but that amount did not cover all program costs. However, there was a carryover of $.5 million which, with the fiscal year 1985 appropriations, totals $2.4 million and should fund all of the existing state programs.

Our Commission is distressed over the absence of funding for the railroad safety program. As you are aware, railroads are moving heavier loads, dangerous explosives, chemicals, and other hazardous materials over its tracks, and we feel very strongly that the continued inspection of the rail trackage and equipment in North Carolina represents a sound investment in federal monies. We are fearful that without federal funds budgetary restrictions will require that we reduce our level of participation severely.

Therefore, we strongly seek your support for the continuation of the Railroad Safety Grant-In-Aid Program.

Yours very truly,

ROBERT K. KOGER,
Chairman.

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT,
Baton Rouge, LA, April 23, 1985.

Hon ROBERT PACKWOOD,
U.S. Senator, Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science, and Transportation, Immigration Building, Washington, DC.

DEAR SENATOR PACKWOOD: We wish to advise you that as the state department responsible for the administration of the Federal Rail Safety State Participation Program, we take issue with the comments made by Federal Railroad Administration Administrator John Riley on April 2, 1985, before the House Appropriations Transportation subcommittee.

Mr. Riley's comments centered around the elimination of the funding for the Rail Safety State Participation Program. He stated that most of the states have a surplus in their budgets and would pick up the lost federal funds. In the case of Louisiana, this is very untrue. The state has had to make cuts in this year's budget and faces a $120 million fall short in next year's budget. There just is not the additional $109,000.00 in state funds available to continue the safety program in Louisiana.

It should be pointed out that our understanding is that there will be no savings by eliminating funding to the State Program because FRA is asking for a net increase of $1,346,000.00 in the railroad safety budget. This, we believe, is in addition to what was included in last year's budget for the Rail Safety Participation Program. Our calculations show that $2.9 million including carryover funds, was spent in FY-85 on the State Program. FRA proposes to eliminate this expenditure by spending $3.2 million. The $3.2 million is calculated by taking the FY-85 appropriation of $1.9 million for the State Program and adding the $1.3 million increase asked for in the FY-86 FRA Budget for the Rail Safety. Certainly, a cost sharing (50-50) with the states would provide a greater number of inspectors and be more cost effective than FRA adding to their cost without an appreciable increase of inspectors.

In other comments made by Mr. Riley, he stated that federal inspectors are better trained and better instructed than state inspectors. This distresses us since state inspectors must meet the same qualification standards set forth in CRF49 as federal inspectors. State inspectors have to follow a training program prescribed by the Associate Administrator leading to federal qualification as an inspector. Mr. Riley's statements indicate that state inspectors are receiving a sub-standard level training and instruction from the Federal Railroad Administration (FRA). If this is the case, FRA should be severely reprimanded for jeopardizing the lives and health of citizens, since they provide the training and instruction for state inspectors.

In the case of Louisiana, the state inspection program has been instrumental in providing liaison between state and local emergency response personnel and the FRA during the time of train disasters. This was demonstrated very clearly during the Livingston train disaster in September 1982. It was through the efforts of our state track inspector that FRA was able to receive any initial information on the disaster and access to the disaster site. Because of the interface and coordination at the state level, we were able to assist FRA during this critical time. This valuable liaison in Louisiana will be lost if funding is stopped.

Because of the amount of hazardous materials transported in and through Louisiana by rail, the state will insist that FRA increase their field personnel to fill the five state rail inspector positions currently allocated to Louisiana under the State Participation Program if funding is lost. Under CRF49, Part 212, Appendix A, Louisiana is authorized two (2) Track Inspectors, two (2) Equipment Inspectors and one (1) Operating Practices Inspector.

I believe you can agree after reading the above information the citizens of Louisiana and the United States will not be served if the Rail Safety State Participation Program is eliminated. The state of Louisiana shares Congress' concern regarding reducing the national deficit but how can the effectiveness of rail safety be improved by increasing the budget and reducing the state inspectors, without replacing them with federal inspectors?

We trust that you will take all the above information into consideration when you evaluate the recommendation to eliminate this program. If we can provide any additional information, please contact Mr. Harry Reed, Director of Public Transit.

Sincerely,

ROBERT L. GRAVES.

DEPARTMENT OF LICENSING AND REGULATION,
DIVISION OF LABOR AND INDUSTRY,
Baltimore, MD, May 2, 1985.

Hon. BOB PACKWOOD,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science, and Transportation, U.S. Senate, Dirksen Building, Washington, DC.

DEAR SENATOR PACKWOOD: Five years ago Maryland's Legislature assigned state rail safety enforcement to the Division of Labor and Industry. I'm chief of the Railroad Safety and Health Unit. Our purpose is to eliminate accident, death, injury, illness and damage in rail operations. Primarily we do this by enforcing Federal Railroad Administration safety standards. We have five inspector positions, four of which are federally half-funded.

Each Maryland rail safety inspector is highly trained and federally certified. As a group they represent four safety disciplines: track, motive power, equipment and operating practices. They are competent, dedicated, and productive. Their salary scale is only ⅔ that of their federal counterparts.

Last year they inspected 6,000 track miles, 17,000 cars, 500 locomotives and 300 train crews. They confirmed correction of more than 4,000 defects, any of which might cause accident or injury. But once again the FRA proposes to cut off its share of Maryland funding!

Maryland, like all 32 states participating in the federal rail safety program, enforces pre-emptive federal regulations. The regulations are good. FRA is responsive. They've corrected many of the early rules deficiencies. We agree that national rail safety standards are essential. But Maryland wants to be a partner not just a donor to the federal program.

Maryland has 1,000 route miles. It has some very heavy traffic routes, nearly 100 hazardous material loads daily, and more very-high-speed passenger train miles than any other state. Last year Maryland inspectors processed 80% of all FRA safety defects found in its certified disciplines. Federal inspectors processed 20%.

Results are good. FRA reportable train accidents in Maryland, which had dropped from 155 in 1976 to 96 in 1980 when the state program began, plunged to 30 last year. That's better than the national improvement.

FRA regulations don't cover all areas of rail safety. Maryland, like most other states, enforces its own clearance laws, sanitation and walkway safety rules with no federal funding. We monitor safety of bridges, rail-highway grade crossings and industry rail operations. All these are beyond FRA jurisdiction but clearly of national concern.

Last year FRA collected about $5 mil. in fines. Although state citations enable FRA to collect, the states receive none of the penalty money. Defect citations by the Maryland unit amounted to nearly a third of the federal funds it received.

When I inquired last fall, participating states had 102 federally part-funded positions and 21 non-federally funded or vacant positions. Salaries were below those of the FRA's 325 field inspectors. State inspectors out-produced FRA inspectors. Some monitored safety beyond FRA scope. I concluded that FRA gets more than its money's worth from partially funding state inspectors.

Certainly FRA gets a fine return from the $85,000 it funds the Maryland program. If funding ends, Maryland's program probably will be reduced. To achieve the same inspection and enforcement levels, federal costs must climb. I urge you to continue authorizing state participation in the federal rail safety program.

Sincerely,

HILMAR B. CHRISTIANSON,
Assistant Commissioner, Railroad Safety and Health.

PUBLIC UTILITY COMMISSIONER OF OREGON,
Salem, OR, May 3, 1985.

Summary Analysis of Oregon's Rail Safety Participation Program (Federal-State Rail Safety Program).

Oregon was certified for participation in the enforcement of federal track safety standards in 1974. We were also certified for enforcement of federal freight car safety standards in 1976. Our equipment inspectors were certified in air brakes and safety appliances in 1983. We are currently applying for participation in the operating practices area.

Certified states conduct the routine inspection surveillance activities in their states, with state personnel enforcing federal rail safety standards. In turn, the state funds the program 50 percent and federal government funds the remaining 50 percent.

1. COST OF PROGRAM

The total cost of Oregon's program for fiscal year 1985, including the supervisory cost and other overhead, is estimated at nearly $300,000 (one-half funded by the federal government). Thus, the annual cost to the federal government during this next year will be approximately $150,000.

2. EMPLOYES INVOLVED

We employ four full-time track and equipment inspectors, as follows:

H.L. Fegles, Track Inspector—formerly a Roadmaster (Maintenance Supervisor) for Burlington Northern Railroad.

R.N. Shankle, Track Specialist—formerly a Roadmaster for Southern Pacific, directly responsible for maintenance of main line tracks between Eugene and California; prior to that, the Toledo Branch.

L.C. Robertson, Equipment Inspector—formerly Assistant Trainmaster-Mechanical, Southern Pacific, responsible for maintenance of equipment in Portland.

C.D. Fogus, Equipment Specialist—13 years of experience in rail freight car repair work, Burlington Northern, while working his way through college.

Our staff is exceptionally well qualified and has earned the respect of the railroad personnel with whom they work.

3. IMPACT ON LEVEL OF EFFORT IN OREGON IF STATE INVOLVEMENT IS TERMINATED

a. Track program

There would be significantly less inspection and enforcement activity in Oregon if state involvement is terminated. FRA has one track inspector to cover Oregon, parts of Washington, California, Idaho, and Alaska. It is obvious that if Oregon and Wshington (which each employ two track inspectors now) drop out of the program, the federal government would have to add inspectors to maintain the same level of effort.

Our inspectors currently inspect each mile of rail trackage in Oregon annually (2,960 main and branch line miles; 4,300 rail miles). Our people also inspect all main line trackage used by Amtrak at least twice a year.

Activity Summary: Track—Defects written by our track inspectors during the past 10½ years between July 1974 and January 1984 are as follows:

Main line	1,938
Branch lines	3,747
Yard track	4,543
Records	1,948

(Defects are conditions which do not meet federal standards.)

Safety record in Oregon since 1978 is as follows:

Number of derailments per year—

1978	139
1979	126
1980	97
1981	64
1982	59
1983	48
1984	50

Safety record nationally since 1978 is as follows:

Derailments per million train miles—9.3 in 1978; 5.9 in 1982 (latest available statistics).

b. Motive Power and Equipment Program

Again, the inspection effort would be significantly reduced if state participation were terminated. FRA has seven motive power and equipment inspectors in the eight-state region which includes Oregon (two in Seattle, one in Spokane, one in Portland, one in Montana, one in North Dakota, and one in Idaho). These people also inspect locomotives and power brakes in addition to freight cars. Our inspectors have been trained and qualified in power brakes and safety appliances and soon will be certified in locomotives. Washington equipment inspectors have been trained and certified likewise.

Our inspectors currently inspect approximately 27,000 rail cars per year, with special emphasis on cars carrying hazardous materials. We inspected 618 cars containing hazardous materials in the last year.

In the last six years, we have instituted a program monitoring and attempting to reduce the rate of bad order cars found in trains okayed by rail personnel for departure. We have observed a steady decrease from 6.3 percent in 1979 to 4.6 percent in 1984.

c. State-FRA Participation Program Activities

See the attached Summary of State-FRA Participation Program (latest statistics available) from the Commissioner's 1983 Accident Summary and Analysis.

4. ASSISTANCE IN FRA SAFETY ASSESSMENTS

Beginning in 1982, FRA began a program of safety assessments of railroads. These assessments are inspections conducted in greater detail than routine activities. Oregon participated in a systems safety assessment of Southern Pacific, making nearly all of the track assessment inspections in the state. Our equipment inspectors worked in pairs with FRA personnel to investigate the railroad's mechanical activities. In addition, the agency's word processing center was instrumental in reducing the report-writing time.

We participated in assessments of Burlington Northern and Union Pacific also.

5. SPECIAL AREAS OF CONCERN

a. Physical condition of Southern Pacific—disinvestment

There was speculation some time ago about Southern Pacific's potential difficulty in raising adequate capital for its railroad operations; however, its pending merger with the Santa Fe, if approved, should place it in a much better competitive and financial position with respect to BN and UP. We believe that routine monitoring of track condition is advantageous to the state in spotting the onset of potential long-term problems related to railroad disinvestment.

b. Routine maintenance during recessions

As an adjunct to the above, Southern Pacific has had a history of cutting back on maintenance on both its track and equipment personnel during economic recessionary periods. Burlington Northern management has instituted changes that may negatively impact railroad maintenance as well. We have been monitoring Southern Pacific and Burlington Northern track and equipment carefully during this period.

c. Hazardous materials

By controlling our own inspection force, we can assure that areas of major exposure to potential damage from derailments of cars containing hazardous materials can be closely monitored for compliance with relevant safety standards. See Section 3.b. above.

d. Support for programs and projects vital to Oregon

See Section 8 below on side benefits realized through participation in this program—examples where track and equipment expertise in state government has been valuable to us in assisting the Legislature and other agencies of state and local government in various programs and projects.

6. SPECIAL SAFETY PROBLEMS DETECTED

Over the years, our track inspectors have found a number of serious defects during inspections which, if not immediately corrected, could have resulted in serious derailments. (Broken rails are a typical example.) Also, our inspectors have found serious defects in freight cars loaded with hazardous material okayed for departure by rail personnel (such as cracked or broken wheels and defective brake gear), which also could have resulted in derailments en route.

In a special case where federal standards did not apply, our track inspector, Dick Shankle, was able to convince Southern Pacific management to make extensive repairs to Tunnel 19 on the Coos Bay Branch. The condition of the tunnel had deteriorated considerably over the years. Major repair work had been included, then dropped, from several consecutive budgets until the hazard became too great to ignore.

7. ACCIDENT INVESTIGATION

The agency investigates major rail accidents, particularly where serious or fatal personal injuries or hazardous materials are involved. Our track and equipment inspectors assist in determining accident causes.

8. SIDE BENEFITS TO STATE

By having track and equipment expertise in state government—melted in with many other areas of expertise in railroading—we have been able to provide valuable assistance to the Legislature and other state and local agencies in several areas:

a. Assistance to Harney County

Harney County has been troubled by rising waters in Malheur Lake which resulted in Union Pacific placing an embargo on its Oregon Eastern Branch to Burns. We personally inspected the threatened area and prepared an estimate of the cost and necessary materials to maintain the line in view of the rising water situation.

b. Restoration of service to Myrtle Point

We were able to immediately send an experienced person to the scene as soon as we were aware of flooding which resulted in rail service to Myrtle Point being suspended indefinitely. Our track specialist was personally familiar with track construction procedures and with the maintenance history of that particular line. He made an estimate of the amount of damage and the cost to restore service. He met with local business people and assisted Oregon DOT and its assessment of the level of funding needed to rebuild the line with federal funding assistance.

c. General assistance to Oregon Department of Transportation

Our track inspectors have assisted ODOT's rail planning staff in assessing the condition of several branch lines being considered for abandonment, verifying railroad cost estimates and assisting the ODOT in determining whether or not the lines should be retained and upgraded with federal rail assistance funds.

d. Coal export study: Astoria Line

Our track people provided valuable information, helping us develop the data necessary to document the amount of work and the cost involved to upgrade Burlington Northern's Astoria Line significantly to handle regular unit coal trains. This is a project of special interest to the Governor.

e. Estimated cost of rebuilding certain rail lines in the Portland area for use by light rail transit

Our track inspectors assisted in a 1974 study of existing and former rail corridors in the Portland area with potential for mass transportation use.

f. Special track and equipment study of the Toledo branch

A few years ago the Toledo Branch of Southern Pacific was experiencing frequent derailments. Both the condition of the track and the type of equipment being operated over it were involved. Our track and equipment forces participated in this special study to determine the cause of derailments and the remedies.

g. Assistance to local governments

Our track inspectors have assisted units in local government as well, such as the Beaverton Railroad Relocation Project. Estimates of track upgrading costs, to compare against railroad—provide estimates, have been useful to local government in analyzing options available.

GEORGE E. HARDY, JR.,
Administrator, Rail Safety Division.

PUBLIC UTILITIES COMMISSION,
STATE OF CALIFORNIA,
San Francisco, CA.

DEAR SENATOR: California is again in jeopardy of losing its Federal/State Rail Safety Participation Program due to the Federal Railroad Administration's failure to fund the States' Grants-in-Aid Program in its 1986 Budget proposal. The Senate and House Appropriations Committees and Transportation Sub-Committees will soon be considering this budget. I strongly urge your support for restoration of funding for the State Participation Program, and that you communicate your support to the Chairmen of these committees.

In 1984, California had 62 fewer train accidents than in 1983. Three million dollars in property damage costs alone were averted, not to mention the reduced threat to life and public safety. Considered nationwide, it is apparent that the Participation Program saves much more than its total costs.

The California Public Utilities Commission employs three inspectors for surveillance and enforcement of Federal Safety Regulations prescribing standards of safety for railroad track, freight car equipment, safety appliances and railroad power brakes. Through the performance of over 600 inspections involving 6,000 miles of track and 24,000 freight cars, these inspectors reported 3,000 defective conditions which required remedial action by the railroad concerned. In addition to filing 28 violations seeking civil penalty, they were able to informally halt numerous other unsafe train operations detected in the course of their surveillance activities.

Again, I strongly urge your support for appropriations to fund the FRA/States Participation Rail Safety Program. This is a program which has been demonstrated to work. If you have any questions, or would like additional information, please feel free to call the Commission's Director of Transportation, Victor Weisser, at (415) 557-3622.

DONALD VIAL,
President.

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